

TENNESSEE FUNERAL LAWS

2004 EDITION



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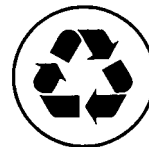
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Tennessee Funeral Laws

TITLE 39

CRIMINAL OFFENSES

CHAPTER 17

OFFENSES AGAINST PUBLIC HEALTH, SAFETY AND WELFARE

SECTION.

PART 3—DISORDERLY CONDUCT AND RIOTS

39-17-312. Abuse of corpse.

PART 3—DISORDERLY CONDUCT AND RIOTS

39-17-312. Abuse of corpse. — (a) A person commits an offense who, without legal privilege, knowingly:

(1) Physically mistreats a corpse in a manner offensive to the sensibilities of an ordinary person;

(2) Disinters a corpse that has been buried or otherwise interred; or

(3) Disposes of a corpse in a manner known to be in violation of law.

(b) A violation of this section is a Class E felony. [Acts 1989, ch. 591, § 1.]

Sentencing Commission Comments. This section consolidates and simplifies former code sections.

Cross-References. Alleging grave-robbing, § 40-13-220.

Identification of grave in indictment, § 40-13-220.

Penalty for Class E felony, § 40-35-111.

Recipients of dead bodies to be notified of

communicable diseases and AIDS, § 68-5-102. Vandalism, § 39-14-408.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Cemeteries, § 10.

Cited: State v. Robinson, 971 S.W.2d 30 (Tenn. Crim. App. 1997); State v. Boatfield, — S.W.3d —, 2001 Tenn. Crim. App. LEXIS 955 (Tenn. Crim. App. Dec. 20, 2001).

NOTES TO DECISIONS

1. Common Law Rule.

Although superceded in 1989 by the passage of T.C.A. § 39-17-312, setting forth the statutory offense of abuse of a corpse, there was prior to that time a valid common-law misdemeanor offense entitled improper disposal of a human body and, therefore, the trial court did not err in summarily dismissing a petition for habeas

corpus relief brought by a former undertaker who was convicted of numerous felony and misdemeanor offenses in connection with the operation of a funeral home between 1978 and 1988. Wilks v. State, — S.W.3d —, 2002 Tenn. Crim. App. LEXIS 1073 (Tenn. Crim. App. Dec. 13, 2002).

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Improper disposition of dead body.

2. — Place.

3. Removing dead body from grave.

4. — Common-law rule.

5. — Indictment.

6. — Condemnation of cemetery lands.

1. Improper Disposition of Dead Body.

2. —Place.

Place was an essential element of an offense under former law. *State v. Vestal*, 611 S.W.2d 819 (Tenn. 1981).

The prohibited locations delineated in the former law were those where the disposal or abandonment of a dead body would be likely to offend the public's sense of decency and morals and to expose the public to danger of contagious diseases or contamination of the water supply. This choice of location evinced legislative intent to protect the public health by prohibiting disposal of dead bodies in locations conducive to the spread of disease. *State v. Vestal*, 611 S.W.2d 819 (Tenn. 1981).

"Other place" meant any other place that posed the likelihood of exposing the public to offensive sights and the danger of contagious diseases, or contamination of the water supply. *State v. Vestal*, 611 S.W.2d 819 (Tenn. 1981).

3. Removing Dead Body from Grave.

4. —Common-Law Rule.

The unauthorized disposition and sale of the dead body of a human being for gain and profit was a common-law misdemeanor of high grade and malum in se. *Thompson v. State*, 105 Tenn. 177, 58 S.W. 213, 51 L.R.A. 883, 80 Am. St. R. 875 (1900).

An attempt to make an unauthorized dispo-

sition and sale of the dead body of a human being for gain or profit was a misdemeanor at common law. *Thompson v. State*, 105 Tenn. 177, 58 S.W. 213, 51 L.R.A. 883, 80 Am. St. R. 875 (1900).

5. —Indictment.

An indictment for an attempt to sell a corpse was not objectionable as uniting several distinct offenses in one count, where it averred that the corpse was delivered to one of the defendants, as an undertaker, for burial; that he and his codefendant conspired not to bury, but to dispose of it for profit and gain to themselves, and that, thereupon, they packed it in a trunk and shipped it away for sale. *Thompson v. State*, 105 Tenn. 177, 58 S.W. 213, 51 L.R.A. 883, 80 Am. St. R. 875 (1900).

Indictment charging in one count that the county undertaker and another failed to bury the body of a pauper given to them for burial but conspired to sell it and that they attempted to sell it charged only the one offense of unlawfully attempting to dispose of a body for profit. *Thompson v. State*, 105 Tenn. 177, 58 S.W. 213, 51 L.R.A. 883, 80 Am. St. R. 875 (1900).

6. —Condemnation of Cemetery Lands.

In the face of former provisions, a railroad company was without right to condemn a right of way through lands of a cemetery company, even though the land had not been improved or used for burial purposes. *Memphis State Line R.R. v. Forest Hill Cem. Co.*, 116 Tenn. 400, 94 S.W. 69 (1906).

Collateral References. Construction and application of grave robbing statutes. 52 A.L.R.3d 701.

Funeral directors liability:

—Acts or omissions relating to corpse. 17 A.L.R.2d 770; 18 A.L.R.4th 858; 48 A.L.R.4th 240; 48 A.L.R.4th 261; 53 A.L.R.4th 360.

—Embalming or preparation of body. 48 A.L.R.3d 261.

—Photograph of corpse, right of action for publication of. 138 A.L.R. 22; 57 A.L.R.3d 16.

—Validity, construction, and application of statutes making it a criminal offense to mistreat or wrongfully dispose of dead body. 81 A.L.R.3d 1071.

—Withholding corpse from relatives. 48 A.L.R.3d 240.

Dead bodies ⇌ 116.1-9.

TITLE 46

CEMETERIES

CHAPTER 1

REGISTRATION OF CEMETERIES

SECTION.

46-1-101. Application — Short title — Penalty.
46-1-102. Definitions.
46-1-103. Certificate of registration — Temporary permit.
46-1-104. Renewal of certificate.
46-1-105. Requirements for organization — Improvement care fund deposit.

SECTION.

46-1-106. Exemptions.
46-1-107. Sale or transfer.
46-1-108. Powers and duties of commissioner — Cemetery advisory board.

46-1-101. Application — Short title — Penalty. — (a) The provisions of this chapter and chapter 2 of this title apply to all cemeteries, community and public mausoleums, whether operated for profit or not for profit, within the state of Tennessee, except cemeteries exempt under § 46-1-106. Cemeteries existing on January 1, 1969, may continue in full force and effect as presently organized but after such date shall be operated in accordance with the provisions of this chapter and chapter 2 which shall be cited as the “General Cemetery Act of 1968.”

(b) Any person violating the provisions of this chapter or chapter 2 of this title commits a Class A misdemeanor. [Acts 1968, ch. 557, § 1; 1973, ch. 272, § 1; T.C.A., § 46-101; Acts 1986, ch. 693, § 3; 1989, ch. 591, § 1.]

Cross-References. Penalty for Class A misdemeanor, § 40-35-111.

Penalty for failure to account for funds, § 46-2-407.

Penalty for failure to maintain improvement care fund, § 46-2-306.

Penalty for trespass or injury to cemetery property, § 46-2-105.

Section to Section References. This chapter is referred to in §§ 46-1-102, 46-1-105, 46-1-106, 46-2-302, 46-2-403, 46-3-102, 46-3-114.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Cemeteries, §§ 3, 8.

Comparative Legislation. Registration of cemeteries:

Ala. Code § 11-17-1 et seq.

Ark. Code § 20-17-901 et seq.

Ga. O.C.G.A. § 44-3-134 et seq.

Ky. Rev. Stat. Ann. § 381.690 et seq.

Miss. Code Ann. § 41-43-33 et seq.

Mo. Rev. Stat. § 214.180.

N.C. Gen. Stat. § 65-1 et seq.

Va. Code § 57-22 et seq.

Collateral References. 14 Am. Jur. 2d Cemeteries §§ 4, 5.

14 C.J.S. Cemeteries §§ 3, 11.

46-1-102. Definitions. — As used in chapters 1 and 2 of this title, unless the context otherwise requires:

(1) “Cemetery” means any land or structure in this state dedicated to and used, or intended to be used, for interment of human remains;

(2) “Cemetery company” means an individual, partnership, corporation, or association, now or hereafter organized, owning or controlling cemetery lands or property and conducting the business of a cemetery;

(3) “Cemetery purposes” means any and all things requisite or necessary for or incident or convenient to the establishment, maintenance, management,

operation, improvement and conduct of a cemetery, the preparation of the premises for interment and the interment of the human dead, and the care, preservation and embellishment of cemetery property;

(4) "Columbarium" means a structure or room or space in a building or structure used, or intended to be used, for the interment of cremated human remains;

(5) "Commissioner" means the commissioner of commerce and insurance;

(6) "Commodity" includes, but is not limited to, memorials consisting of permanent monuments or gravemarkers of marble, granite or bronze, bronze plaques, or bronze vases; and foundations or footings of such memorials. "Commodity" does not include floral arrangements and plants;

(7) "Consumer price index" means the consumer price index (all items — United States city average), as published by the United States department of labor, bureau of labor statistics;

(8) "Crypt" means a chamber of sufficient size to inter the remains of a deceased person;

(9) "General fund" means the sum total of specific funds placed in a single fund;

(10) "Human remains" or "remains" means the body of a deceased person and includes the body in any stage of decomposition and cremated remains;

(11) "Improvement care" means the continual maintenance of the cemetery grounds and graves in keeping with a properly maintained cemetery, including the cutting of the grass upon and the raking and cleaning of cemetery plots at reasonable intervals, the pruning of shrubs and trees thereon; the memorial care of commodities; the procuring, maintaining and keeping in workable condition the machinery, tools and equipment needed for the shop and replacing the same when necessary; keeping in repair and preserving the drains, water lines, roads, buildings, fences and other structures, including cemetery-owned statues and embellishments of general character applicable to the cemetery as a whole or a particular area; administration of the cemetery, including, but not limited to, the paying of insurance premiums, pensions, maintaining the necessary records of lot ownership, burials and other necessary information and making the same available to public authorities and interested persons;

(12) "Interment" means any lawful disposition of the remains of a deceased person as provided by law;

(13) "Lawn crypts" means pre-placed chambers, constructed of reinforced concrete and installed in quantity, either side by side or multiple depth, with gravel and tile underlay and covered by earth or sod, each crypt being an integral part of a given garden area;

(14) "Lot" or "grave space" means a space of ground in a cemetery used or intended to be used for interment therein, the beautification of the ground, or the memorialization of the deceased person;

(15) "Mausoleum crypts" means chambers contained in a structure or building constructed of reinforced concrete whether assembled above or below ground;

(16) "Memorial care" includes, but is not limited to, resetting or straightening tipped commodities, replacing damaged commodities, and providing for the general maintenance of commodities;

(17) "Merchandise" means personal property sold by a cemetery company, such as foundations, markers, memorials, memorial bases, monuments, urns, vases, lawn and mausoleum crypts;

(18) "Niche" means a space in a columbarium used, or intended to be used, for the interment of the cremated remains of one (1) or more deceased persons;

(19) "Pre-need" means the time prior to death when the use of merchandise or services is not actually required;

(20) "Services" means acts performed by a cemetery company on its premises in the final interment of human remains or the installation of merchandise used in connection therewith;

(21) "Specific funds" means funds identified to merchandise to be delivered or services to be performed as specified in a certain contract and earmarked as having been paid by a certain purchaser; and

(22) "Undeveloped" means real property which is not presently suitable for interment, entombment or inurnment as described in the purchase agreement. [Acts 1968, ch. 557, § 1; impl. am. Acts 1971, ch. 137, § 1; Acts 1979, ch. 307, § 2; T.C.A., § 46-102; Acts 1980, ch. 780, §§ 1, 2.]

Section to Section References. This section is referred to in § 46-2-302.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Cemeteries, §§ 2, 8.

46-1-103. Certificate of registration — Temporary permit. —

(a) Except as otherwise provided in this chapter, it is a Class C misdemeanor for any cemetery company to operate a cemetery or separate geographical site of a cemetery in this state without a valid certificate of registration for such cemetery or separate site thereof.

(b) An application for registration shall be submitted on the form prescribed by the commissioner. The applicant shall state on such form:

(1) The location of the cemetery (or separate site thereof);

(2) The name and address of the cemetery company, and (if a corporation) the date of incorporation; and

(3) Such other information as the commissioner may reasonably require.

(c)(1) Upon approval of the application and receipt of a filing fee as set by the commissioner, the commissioner shall issue a certificate of registration to the applicant.

(2) No certificate of registration is transferable.

(d)(1) Upon receipt of a satisfactory application on the prescribed form, the commissioner may issue a temporary permit authorizing operation of a cemetery if the commissioner determines that:

(A) No cemetery company holds a valid certificate of registration for such cemetery;

(B) No cemetery company has submitted a sufficient application for a certificate of registration for such cemetery; and

(C) Issuance of such temporary permit would be clearly in the public interest.

(2) A temporary permit is subject to such conditions and limitations as the commissioner may set forth.

(3) The commissioner may, upon request, extend the duration of a temporary permit. In no case, however, shall a temporary permit authorize continuous operation of a cemetery for longer than one (1) year.

(4) The commissioner may terminate a temporary permit at any time by giving written notice to the holder at least ten (10) days before the effective date of such termination. [Acts 1968, ch. 557, § 1; impl. am. Acts 1971, ch. 137, § 1; Acts 1973, ch. 272, §§ 2, 3; 1976, ch. 773, § 1; 1979, ch. 307, § 3; T.C.A., § 46-103; Acts 1986, ch. 693, §§ 1, 4; 1989, ch. 591, §§ 1, 6, 113; 1992, ch. 922, § 2.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

Section to Section References. This section is referred to in § 46-2-311.

46-1-104. Renewal of certificate. — (a) All certificates of registration issued by the commissioner under the provisions of this chapter expire at the end of the registrant's fiscal year following issuance thereof, and become invalid after such date unless renewed.

(b) Renewal of a certificate of registration may be effected at any time during the two (2) months preceding the date of expiration upon submission of an application to the commissioner on the prescribed form, accompanied by a renewal fee as set by the commissioner.

(c) The fee for late renewal for certificates of registration shall be increased by an amount as set by the commissioner for each month or fraction thereof that payment for renewal is delayed. No renewal application will be accepted later than nine (9) months after the expiration date of a certificate.

(d) The fee for reinstatement of a nonrenewed certificate of registration shall be set by the commissioner. [Acts 1968, ch. 557, § 1; 1973, ch. 272, § 4; 1979, ch. 307, § 3; T.C.A., § 46-104; Acts 1986, ch. 693, § 5; 1992, ch. 922, §§ 3-5.]

46-1-105. Requirements for organization — Improvement care fund deposit. — (a) No person or group of persons shall engage in the business of owning and operating a cemetery company except as authorized by this chapter and chapter 2 of this title, and without first:

(1) If a corporation, applying for and obtaining from the secretary of state a charter or certificate of authority, which shall be retained in an active status as long as the cemetery company is owned and operated by the applicant;

(2) Entering into a trust agreement in accordance with § 46-2-302; and

(3) Depositing either cash in its improvement care trust fund, or an acceptable surety bond with the commissioner, in the following amounts:

For cemeteries located in counties having populations estimated by the federal census of 1960, or any subsequent federal census, of:

10,000 or under	\$10,000
10,001 to 15,000	15,000
15,001 to 20,000	20,000
20,001 to 100,000	25,000
100,001 or more	50,000

(b) The secretary of state shall neither file a charter nor issue a certificate of authority for a cemetery company unless it bears or has affixed a certifica-

tion of the commissioner or the commissioner's designee that the applicant has complied with this section.

(c) The requirements of this section shall also be applicable to any existing cemetery company which establishes or opens a new cemetery.

(d) Deposit requirements applicable to cemeteries existing on January 1, 1969, shall be determined solely according to the provisions of § 46-2-302.

(e) After compliance with this section, the cemetery company shall not be required to deposit additional sums under § 46-2-302 until the aggregate of deposits required thereunder exceeds the deposit required and made hereunder. [Acts 1968, ch. 523, § 1 (17.05); 1968, ch. 557, § 1; impl. am. Acts 1971, ch. 137, § 1; 1976, ch. 773, § 2; T.C.A., § 46-105; Acts 1986, ch. 693, §§ 1, 6.]

46-1-106. Exemptions. — (a) The provisions of this chapter and chapter 2 of this title do not apply to:

- (1) Cemeteries owned by municipalities;
- (2) Cemeteries owned by churches, associations of churches, or church governing bodies;
- (3) Cemeteries owned by religious organizations;
- (4) Family burial grounds; or
- (5) Cemeteries owned by general welfare corporations created by special act of the general assembly;

provided, that such cemeteries are not operated for profit and no funds of the cemeteries are used or expended, directly or indirectly, to compensate a sales contractor, sales manager or promoter of the cemetery; provided, that nothing herein shall prevent a cemetery owned by a church, association of churches or church governing body that has owned the cemetery in question for a period of five (5) years, and has operated the cemetery for religious purposes and not for profit during the period, from compensating a sales manager, sales contractor or promoter.

(b) The commissioner has the discretion to extend this exemption to community cemeteries after taking into consideration the intent of this chapter and factors including, but not limited to, the following:

- (1) The age of the cemetery;
- (2) The remaining area for future use;
- (3) The sale of lots over the preceding ten (10) years; and
- (4) The population of the community normally served by the cemetery.

(c) The commissioner may at any time revoke any exemption granted a community cemetery under this authority. [Acts 1968, ch. 557, § 1; 1972, ch. 617, § 1; 1973, ch. 272, § 5; 1979, ch. 142, § 1; T.C.A., § 46-106; Acts 1986, ch. 693, §§ 7, 8.]

Cross-References. Ownership by Knights of Pythias lodge, § 48-102-301.

Ownership by Masonic lodges, § 48-102-202.

Ownership by religious societies, §§ 66-2-201, 66-2-203.

Ownership by veterans' organizations, § 48-102-401.

Section to Section References. This section is referred to in §§ 46-1-101, 46-2-409, 46-3-102, 46-3-112.

46-1-107. Sale or transfer. — (a) Prior to the sale or transfer of any cemetery required to be registered by this chapter, or a controlling interest in

the cemetery company that owns the cemetery, the transferor shall notify the commissioner in writing and:

(1) Submit any documentation or records the commissioner may require in order to determine the amount of any indebtedness of the transferor to the pre-need trust account or the improvement care trust fund; and

(2) Disclose any agreements between the transferor and transferee regarding:

(A) Any existing cemetery trust accounts established pursuant to chapter 2, part 4 of this title; and

(B) Assumption or disclaimer of liabilities of the transferor.

(b) Except as provided in subsection (c), the transferee shall not be entitled to a certificate of registration for such cemetery before:

(1) The provisions of subsection (a) have been complied with; and

(2) Any indebtedness of the transferor to the pre-need trust account or the improvement care trust fund has been liquidated.

(c) Notwithstanding indebtedness of the transferor to the pre-need trust account or the improvement care trust fund, the commissioner may issue a certificate of registration to the transferee if the commissioner determines that:

(1) The sale or transfer is in the best interests of the maintenance and continued operation of the cemetery;

(2) The sale or transfer is not designed to circumvent the provisions of this title; and

(3) The transferee has satisfactorily agreed to liquidate the indebtedness to the maximum feasible extent.

(d) The state may, for the benefit of the pre-need trust account or the improvement care trust fund:

(1) Recover from the transferor all sums which the transferor has not properly accounted for and paid into the fund; and

(2) Recover from the transferee all sums which the transferee has not properly accounted for and paid into the fund.

(e) The issuance of a certificate of registration under this section shall not operate to release any person, firm or corporation from any obligations to the pre-need trust account or the improvement care trust fund. [Acts 1973, ch. 272, § 6; 1977, ch. 147, § 1; T.C.A., § 46-107; Acts 1986, ch. 693, §§ 2, 9; 2003, ch. 81, §§ 1-5.]

Amendments. The 2003 amendment inserted “the pre-need trust account or” in (a)(1), (b)(2), (c), (d), and (e).

Effective Dates. Acts 2003, ch. 81, § 7. May 5, 2003.

Cross-References. Improvement care trust fund, ch. 2, part 3 of this title.

46-1-108. Powers and duties of commissioner — Cemetery advisory board. — (a) The commissioner is responsible for administering and enforcing the provisions of this title.

(b) The commissioner may promulgate such rules and regulations as are reasonably necessary to effectuate the purposes of this title. All such rules and regulations shall be promulgated in accordance with the Uniform Administra-

tive Procedures Act, compiled in title 4, chapter 5.

(c) The commissioner may seek relief at law or equity to restrain or enjoin any act or practice in violation of this title, or of any rule and regulation promulgated for the administration or enforcement of the provisions of this title. Jurisdiction is conferred upon the chancery and circuit courts of this state to hear and determine such a suit. No bond is required for the prosecution of the suit or for the issuance of an injunction.

(d) The commissioner may deny, suspend, revoke or refuse to renew any certificate of registration issued or to be issued under this title for a violation of the provisions of this title or of any rule or regulation promulgated for the administration or enforcement of the provisions of this title. In addition to or instead of any lawful disciplinary action under this section, the commissioner may assess a civil penalty appropriate to the violation of any provision of this title, or any rule promulgated for the administration or enforcement of the provisions of this title.

(e) The commissioner shall, as authorized by § 4-5-205, appoint an advisory board of experts in the field of cemetery operation and management service to advise the commissioner with respect to any contemplated rulemaking under this section. Such advisory board shall consist of one (1) member from each grand division of the state and two (2) members appointed at-large. Of the members initially appointed, one (1) shall serve for one (1) year, one (1) for two (2) years, one (1) for three (3) years, one (1) for four (4) years and one (1) for five (5) years. The advisory board shall consist of five (5) members. Prior to the end of the expiring term of each member of the advisory board, the Cemetery Association of Tennessee, Inc., shall submit a list of five (5) names to the commissioner. At least three (3) cemetery board members shall be selected from names submitted by the Cemetery Association of Tennessee, Inc. Such advisory board may make formal recommendations to the commissioner or the general assembly. The advisory board shall annually elect from its members a chair and necessary officers. Such advisory board members shall serve without compensation and travel expense. This advisory board is known as the cemetery advisory board. [Acts 1992, ch. 922, § 1; 1994, ch. 875, § 1; 2003, ch. 81, § 6.]

Compiler's Notes. The cemetery advisory board, created by this section, terminates June 30, 2009. See §§ 4-29-112, 4-29-230.

Amendments. The 2003 amendment, in (d), added the present first sentence, and deleted "and regulation" following "any rule"

in the present second sentence.

Effective Dates. Acts 2003, ch. 81, § 7. May 5, 2003.

Section to Section References. This section is referred to in § 4-29-230.

CHAPTER 2

CEMETERY COMPANIES

SECTION.

PART 1—GENERAL PROVISIONS

46-2-101. Purchase and subdivision of land —

SECTION.

Sale of lots — Approval of cemetery use.

46-2-102. Lots to be free from attachment or execution.

SECTION.

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PART 1—GENERAL PROVISIONS

46-2-101. Purchase and subdivision of land — Sale of lots — Approval of cemetery use. — (a) A cemetery company has the power to purchase land, not exceeding two hundred (200) acres, to be used as a cemetery forever; to lay the same off in suitable avenues or walks and embellish with trees, shrubbery, and flowers, and to subdivide the land into lots suitable for graves, monuments, and vaults, and sell the same in such manner as the board of directors may determine; provided, that any land may be purchased and used as a cemetery at any place within a town or city after the proposed location shall have been approved by resolution of the governing body of such town or city.

(b) Each contract for the sale of burial space or the conveyance of interment rights shall be executed in duplicate, and an executed copy shall be given to the purchaser. [Acts 1875, ch. 142, § 9; 1895, ch. 131, § 1; 1899, ch. 277, § 1; Shan., § 2181; Acts 1919, ch. 195, § 1; Code 1932, § 3919; Acts 1968, ch. 557, §§ 2, 4; T.C.A. (orig. ed.), § 46-101; T.C.A., § 46-201; Acts 1984, ch. 585, § 1; 1986, ch. 693, § 10.]

Cross-References. Assessment of tax on shares, § 67-5-1101.

Business tax, § 67-4-708.

Property tax exemption, § 67-5-214.

Section to Section References. This chapter is referred to in §§ 46-1-101, 46-1-102, 46-1-105, 46-1-106, 46-3-102, 46-3-114.

This section is referred to in § 62-5-101.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Cemeteries, § 8.

Comparative Legislation. Cemetery companies:

Ala. Code § 10-4-20 et seq.

Ark. Code § 20-17-1001 et seq.

Ga. O.C.G.A. § 44-3-131 et seq.

Ky. Rev. Stat. Ann. § 303.100 et seq.

Miss. Code Ann. § 41-43-31 et seq.

Mo. Rev. Stat. § 355.025 et seq.

N.C. Gen. Stat. § 65-16 et seq.

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1. Constitutionality.
2. Purpose.
3. Dedication to public use.
4. — Discrimination in sales prohibited.
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1. Constitutionality.

The 1984 amendment to this section is not unconstitutional. *Valley Forge Civic League v. Ford*, 713 S.W.2d 665 (Tenn. Ct. App. 1986).

2. Purpose.

This section was intended to set forth the procedure a corporation qualified to engage in the cemetery business was to follow in developing a cemetery in or close to a town. *Sullivan v. Harpeth Dev. Corp.*, 218 Tenn. 107, 401 S.W.2d 195 (1966).

3. Dedication to Public Use.

The lands acquired for cemetery purposes, by a cemetery company incorporated under the general laws of this state, are thereby dedicated to a public use. *Memphis State Line R.R. v. Forest Hill Cem. Co.*, 116 Tenn. 400, 94 S.W. 69 (1906).

The public purpose to which cemetery lands are dedicated is not defeated, and the use rendered a private one, by the fact that the incorporators may realize a profit out of the enterprise, nor because the charter or the law does not fix the price at which burial lots are to be sold. *Memphis State Line R.R. v. Forest Hill Cem. Co.*, 116 Tenn. 400, 94 S.W. 69 (1906).

4. —Discrimination in Sales Prohibited.

Cemetery companies must sell to all who may apply “the same measure of accommodation for the same measure of money.” The power conferred by the charter upon the board of directors to sell the lots “in such manner” as they may determine has reference to the modes and terms of payment, the taking of securities therefor, and the like, and not to the persons to whom they shall sell. *Memphis State Line R.R.*

v. Forest Hill Cem. Co., 116 Tenn. 400, 94 S.W. 69 (1906).

5. —Right to Mortgage.

The statutory power to mortgage in the charter of a cemetery company does not negate an intention that its property shall be devoted to public use, for the nature of the rights secured by the law and charter to lot owners is such as to forbid the mortgaging of anything except that part of the proceeds of lots sold which is not devoted to the maintenance and improvement of the cemetery. *Memphis State Line R.R. v. Forest Hill Cem. Co.*, 116 Tenn. 400, 94 S.W. 69 (1906).

6. Condemnation for Other Uses.

Lands acquired by a cemetery company for cemetery purposes are not subject to condemnation for another and inconsistent public use. A railroad company is not entitled to condemn a right-of-way through a tract of land acquired for use as a cemetery by a company incorporated for that purpose, where the plans devised by the cemetery contemplate the use of the whole as a cemetery. *Memphis State Line R.R. v. Forest Hill Cem. Co.*, 116 Tenn. 400, 94 S.W. 69 (1906).

7. Taxation of Real Estate.

The real estate held for use as a cemetery by such corporation is exempt from taxation. For scope of the taxing power, see *Forest Hill Cem. Co. v. Creath*, 127 Tenn. 686, 157 S.W. 412 (1913).

8. —Exemption of Improvement Fund.

For purposes of taxation, the improvement fund of a cemetery company for profit is to be treated as the realty of which it was the product — exempt. *Forest Hill Cem. Co. v. Creath*, 127 Tenn. 686, 157 S.W. 412 (1913).

9. Injunction.

This section did not confer on private citizens any standing in court to enjoin cemetery corporation from operation of cemetery for alleged failure of corporation to obtain permission of proper authorities to operate cemetery. *Sullivan v. Harpeth Dev. Corp.*, 218 Tenn. 107, 401 S.W.2d 195 (1966).

Collateral References. 14 Am. Jur. 2d Cemeteries §§ 14, 15.

14 C.J.S. Cemeteries §§ 5-12.

Liability for improper manner of reinterment of dead bodies. 53 A.L.R.4th 394.

Liability of cemetery in connection with conducting or supervising burial services. 42 A.L.R.4th 1059.

Regulations in relation to cemeteries, generally. 96 A.L.R.3d 921.

Validity, as for charitable purpose, of trust for maintenance or care of private cemetery, burial lot, tomb or monument, of erection of tomb or monument. 47 A.L.R.2d 596.

Validity, construction, and application of statutes or ordinances regulating perpetual-care trust funds of cemeteries and mausoleums. 54 A.L.R.5th 681.

46-2-102. Lots to be free from attachment or execution. — All lots thus sold to purchasers shall forever be free from attachment or the levy of an execution. [Acts 1875, ch. 142, § 9; 1895, ch. 131, § 1; 1899, ch. 277, § 1; Shan., § 2181; Acts 1919, ch. 195, § 1; Code 1932, § 3919; Acts 1968, ch. 557, § 2; T.C.A. (orig. ed.), § 46-102; T.C.A., § 46-202.]

46-2-103. Receiving and holding of grants and bequests. — (a) Such company may hold any grant or bequest in money or other property, and shall faithfully apply the same for the improvements of the cemetery, or in the erection or preservation of any tomb or monument, according to the terms of such grant or bequest, except those funds required to be held in trust, or paid into the improvement care trust fund as provided by § 46-2-202.

(b) No cemetery company shall accept any special grant or bequest unless it is in writing and made a part of the permanent records of the cemetery. [Acts 1875, ch. 142, § 9; Shan., § 2184; Code 1932, § 3922; Acts 1968, ch. 557, §§ 2, 4; T.C.A. (orig. ed.), § 46-103; 1976, ch. 773, § 3; T.C.A., § 46-203.]

Cross-References. Improvement care trust fund, part 3 of this chapter.

46-2-104. Sale of land not suitable or needed for cemetery purposes. — Cemetery companies owning lands never actually used by them for cemetery purposes, and which are not suitable or adapted to such purpose, or are found by them to be not needful for such purposes, are empowered to sell and convey or otherwise dispose of the same for secular or general uses; provided, that nothing in this section shall be construed to authorize such companies to acquire any lands for the purpose of selling the same again or to engage in speculation in real estate. [Acts 1907, ch. 94, § 1; Shan., § 2185a1; Code 1932, § 3936; Acts 1968, ch. 557, § 2; T.C.A. (orig. ed.), § 46-104; T.C.A., § 46-204.]

46-2-105. Trespass or injury to cemetery property — Interference with processions or religious exercises — Penalty. — (a) No person shall willfully destroy, deface, or injure any monument, tomb, gravestone, or other structure placed in the cemetery, or any roadway, walk, fence or enclosure in or around the same, or injure any tree, plant or shrub therein, or hunt or shoot therein, play at any game or amusement therein, or loiter for lascivious or lewd purposes therein, or interfere, by words or actions, with any funeral procession or any religious exercises.

(b)(1) A violation of this section is a Class E felony.

(2) Following conviction of a person for violating subsection (a), evidence of damages sustained as a result of such violation shall be presented to the jury which shall ascertain the total amount thereof. The court shall then render judgment in such amount against the offender in favor of the cemetery and/or the other aggrieved parties and shall order the offender to make full restitution for such damages. Execution of such judgment shall issue as in other civil cases. Such order of restitution shall be in addition to other sanctions imposed pursuant to subdivision (b)(1). [Acts 1875, ch. 142, § 9; Shan., § 2182; Code 1932, § 3920; Acts 1968, ch. 557, § 2; T.C.A. (orig. ed.), § 46-118; Acts 1976, ch. 708, § 2; T.C.A., §§ 46-218, 46-2-118; Acts 1989, ch. 591, § 40; 1995, ch. 134, § 1.]

Cross-References. Disorderly conduct, § 39-17-305.

Penalty for Class E felony, § 40-35-111.
Vandalism, § 39-14-408.

Section to Section References. This section is referred to in § 6-54-113.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Cemeteries, § 10.

Cited: State v. Burns, 6 S.W.3d 453 (Tenn. 1999).

Collateral References. Criminal statute specifically denouncing offenses affecting cemeteries, tombstones and the like. 132 A.L.R. 557.

46-2-106. Constable to make arrests for such offenses — Appointment by county legislative body. — The court exercising the authority of the former county court of the county in which the cemetery is situated may, with the assent of, or on application by, the board of directors, appoint a person, to be known and commissioned by the court exercising the authority of the former county court as county constable, who shall, with or without warrant (the company being held liable for the abuse of any person by such person) arrest and bring to trial all persons committing any of the aforementioned offenses. [Acts 1875, ch. 142, § 9; Shan., § 2183; Code 1923, § 3921; Acts 1968, ch. 557, §§ 2, 4; impl. am. Acts 1978, ch. 934, §§ 7, 36; T.C.A. (orig. ed.), § 46-119; T.C.A., §§ 46-219, 46-2-119; modified.]

46-2-107. [Obsolete.]

Code Commission Notes. This section (Acts 1986, ch. 693, § 25), concerning the expiration of certificates issued prior to June 30, 1986, is deemed by the Code Commission to be obsolete.

PART 2—RECORDS AND REPORTS

46-2-201. Records. — (a) A record shall be kept of every burial in the cemetery of the cemetery company, showing the date of burial and name of the person buried, together with the designation of lot or space in which such burial was made therein. In addition, the cemetery company shall keep records showing the date of sale of each lot, grave, crypt, niche, or mausoleum, and the amount of the sale, the contract number, the name of the purchaser, and the amount of the sale to be held for inclusion in the improvement care trust fund and the date of the receipt of the final payment on such sale, all on a form acceptable to the commissioner. The cemetery company shall also keep records showing the full amount received for installation of each commodity and the full amount deposited into the improvement care trust fund for memorial care

of each commodity, identified by lot owner and decedent occupying grave space. The identical information is required if deposits to the improvement care trust fund are made on a collection basis. All sales records, trust fund records, accounting records, and all other accounting records of the cemetery company shall be available at its principal place of business or principal office in this state, and shall be readily available at all reasonable times for examination or inspection by the commissioner or the commissioner's authorized representatives.

(b) All accounting records required to be kept under this section shall be considered as part of the cemetery, and shall be included in any sale or transfer thereof. All burial and interment rights records shall be retained indefinitely. All other records shall be retained for at least ten (10) years, unless the commissioner approves a shorter period of retention. [Acts 1927, ch. 75, § 13; mod. Code 1932, § 3935; Acts 1961, ch. 44, § 1; 1968, ch. 557, § 2; T.C.A. (orig. ed.), § 46-105; Acts 1976, ch. 773, § 4; T.C.A., §§ 46-205, 46-2-105; Acts 1980, ch. 780, § 3; 1986, ch. 693, § 11.]

Compiler's Notes. Acts 1927, ch. 75 was declared unconstitutional in *Spring Hill Cem. v. Lindsey*, 162 Tenn. 420, 37 S.W.2d 111 (1931).

Cross-References. Improvement care trust fund, part 3 of this chapter.

46-2-202. Financial reports. — (a) Within seventy-five (75) days after the end of the calendar year or its fiscal year and within seventy-five (75) days on an annual basis thereafter, each cemetery company shall file with the commissioner a report of its condition, on forms provided by the commissioner, which report shall contain the following information:

(1) The name of the cemetery company, the date of incorporation, if incorporated, and the location of the cemetery or cemeteries owned by the company;

(2) The amounts of sales of cemetery lots, grave spaces, mausoleum crypts or niches for which payment has been made in full or certificate or deeds of conveyance issued thereon during the preceding calendar or fiscal year;

(3) The amounts received for the special care of any lots, graves, crypts, niches, family mausoleums, memorials, markers or monuments;

(4) The amounts received for the memorial care of commodities;

(5) The amounts paid into the permanent improvement care fund, and the income earned therefrom during the preceding fiscal year;

(6) The number of acres embraced within each cemetery and held by the cemetery company for cemetery purposes; and

(7) The names and addresses of the owners of the cemetery company or the officers and directors of the corporation and any change of control which has occurred during the past calendar or fiscal year.

(b) Within forty-five (45) days after the end of the calendar or fiscal year of the cemetery company, the trustee of the improvement care fund of the cemetery company shall file with the commissioner a financial report with respect to the trust fund on forms which shall be obtained from the commissioner. The report shall include, among other financial disclosures, specific disclosure of the following:

(1) The current value of the assets (on both a book value and market value basis) and liabilities of the trust as of the beginning and end of the fiscal year of the trust;

(2) Any and all sales, exchanges, or leases of any property between the trust and the cemetery company, any owner of an interest in the cemetery company, any officers or directors or managers of the cemetery company, or relatives of any such person;

(3) Any loans by the trust or fixed income obligations due the trust classified as uncollectible or in default as of the close of the fiscal year of the trust;

(4) Whether the trust at any time held twenty percent (20%) or more of its assets in any single security, debt, mortgage, parcel of real estate, or partnership/joint venture interests;

(5) Whether the trust at any time engaged in any transaction or series of related transactions involving twenty percent (20%) or more of the current value of the trust; and

(6) Whether there were any purchases of nonpublicly traded securities by the trust, the value of which was set without an appraisal by an independent third party.

The commissioner may require the trustee to make such additional financial reports as the commissioner may deem advisable. [Acts 1927, ch. 75, § 3; mod. Code 1932, § 3924; Acts 1961, ch. 44, § 2; 1968, ch. 557, § 2; T.C.A. (orig. ed.), § 46-106; Acts 1973, ch. 272, § 7; 1976, ch. 773, § 5; T.C.A., §§ 46-206, 46-2-106; Acts 1980, ch. 780, § 4; 1995, ch. 203, § 2; 1995, ch. 485, §§ 1, 6; 1997, ch. 374, § 1.]

Compiler's Notes. Acts 1927, ch. 75 was declared unconstitutional in *Spring Hill Cem. v. Lindsey*, 162 Tenn. 420, 37 S.W.2d 111 (1931).

Cross-References. Annual trust fund reports, § 46-2-410.

Section to Section References. This section is referred to in §§ 46-2-103, 46-2-308.

46-2-203. Verification of reports — Public records. — The annual reports required to be filed herein shall be duly verified under oath by the owner of the cemetery company and the annual reports by the trustee of the trust fund. Upon filing, the reports shall become public records. [Acts 1927, ch. 75, § 3; mod. Code 1932, § 3925; Acts 1961, ch. 44, § 3; 1968, ch. 557, § 2; T.C.A. (orig. ed.), § 46-107; T.C.A., §§ 46-207, 46-2-107; Acts 1995, ch. 485, § 2; 1997, ch. 374, § 2.]

Compiler's Notes. Acts 1927, ch. 75 was declared unconstitutional in *Spring Hill Cem. v. Lindsey*, 162 Tenn. 420, 37 S.W.2d 111 (1931).

46-2-204. Penalty for failure to file report. — (a) Any owner or officer of a cemetery company or officer of the trustee of the respective improvement care fund who willfully fails to make the required report, or to file the report of the trustee, required in this part, commits a Class C misdemeanor.

(b) Upon failure to receive an annual report from any cemetery company when due, the commissioner shall be notified, and shall immediately notify the

cemetery company, by registered letter sent to the address found on the cemetery company's registration form, that the annual report has not been received. Failure of the cemetery company to file the annual report within fifteen (15) days after such a registered letter is mailed shall constitute prima facie evidence of willful failure to file, and the commissioner has the discretion to order a conditional suspension of the certificate of registration and institute proceedings as set forth in §§ 46-2-311 and 46-2-312. [Acts 1927, ch. 75, § 5; Code 1932, § 3927; Acts 1968, ch. 557, § 2; T.C.A. (orig. ed.), § 46-108; Acts 1976, ch. 773, § 6; T.C.A., §§ 46-208, 46-2-108; Acts 1989, ch. 591, §§ 1, 113; 1995, ch. 485, §§ 3, 4; 1997, ch. 374, § 2.]

Compiler's Notes. Acts 1927, ch. 75 was declared unconstitutional in *Spring Hill Cem. v. Lindsey*, 162 Tenn. 420, 37 S.W.2d 111 (1931).

Cross-References. Certified mail instead of registered mail, § 1-3-111.

Penalty for Class C misdemeanor, § 40-35-111.

Revocation of charter or certificate of authority, § 46-2-308.

Section to Section References. This section is referred to in § 46-2-311.

46-2-205. Duties of commissioner. — (a) It is the duty of the commissioner or the commissioner's duly authorized representatives to examine the annual reports made by the cemetery companies and the annual reports made by the trustees, which shall be filed and carefully preserved as a part of the permanent records of the office. The commissioner or the commissioner's duly authorized representatives shall audit and examine the books, records, and papers employed in preparing such annual reports of each cemetery company and trustee once every two (2) years. The commissioner or the commissioner's duly authorized representatives are authorized to audit and examine the books, records, and papers employed in preparing such annual reports of each cemetery company and trustee more frequently than once every two (2) years whenever it appears to the commissioner that such cemetery company or trustee has failed to comply with any provisions contained in this chapter. Whenever it appears to the commissioner that any cemetery company has failed to comply with any provision contained in this chapter, the commissioner is hereby authorized to examine such cemetery company, including all books, records and papers employed in the transaction of its business for the purpose of discovering violations of this chapter.

(b) The necessary expense of any examination made pursuant to this section shall be paid by the cemetery company at a rate set by the commissioner.

(c) The commissioner is further authorized upon the finding of any irregularity or violation of this part to allow, at the commissioner's discretion, a reasonable time for such irregularity or violation to be corrected or to enforce compliance with the provisions of this part through the chancery courts or other courts of the state having jurisdiction. [Acts 1927, ch. 75, § 4; Code 1932, § 3296; Acts 1961, ch. 44, § 4; 1968, ch. 557, § 2; 1968, ch. 627, § 1; T.C.A. (orig. ed.), § 46-109; Acts 1971, ch. 432, § 1; 1973, ch. 272, §§ 8, 9; T.C.A., §§ 46-209, 46-2-109; Acts 1983, ch. 141, § 1; 1992, ch. 922, § 6; 1995, ch. 203, § 1; 1995, ch. 485, § 5; 1997, ch. 374, § 2.]

Compiler's Notes. Acts 1927, ch. 75 was declared unconstitutional in *Spring Hill Cem. v. Lindsey*, 162 Tenn. 420, 37 S.W.2d 111 (1931).

Cross-References. Inspection of trust account records, § 46-2-410.

PART 3—IMPROVEMENT CARE TRUST FUND

46-2-301. Purpose of part. — It is the purpose of this part to require cemetery companies in the state at all times to carry a sufficient improvement care trust fund to maintain, keep up and beautify the cemeteries, without commercializing the operation of the same. [Acts 1927, ch. 75, § 11; mod. Code 1932, § 3933; Acts 1968, ch. 557, §§ 2, 4; T.C.A. (orig. ed.), § 46-117; T.C.A., §§ 46-217, 46-2-117.]

Compiler's Notes. Acts 1927, ch. 75 was declared unconstitutional in *Spring Hill Cem. v. Lindsey*, 162 Tenn. 420, 37 S.W.2d 111 (1931).

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Cemeteries, § 8.

46-2-302. Creation of fund. — (a) Every cemetery company engaged in the business of selling lots, grave spaces, crypts, niches, and burial rights in this state shall establish and forever maintain an improvement care trust fund for each separate cemetery and for each separate geographical location of each cemetery owned and operated by the cemetery company, to provide for the improvement care and maintenance of such cemetery or such separate geographical location. Such trust fund shall be established by executing a written trust agreement with a trust company approved by the commissioner, or with a state or national bank, or with savings and loan associations having insurance of accounts as required by law; provided, that at any time a cemetery company may change the trustee of its trust fund.

(b) The written trust agreement shall specifically state the following:

(1) The nature and extent of care to be furnished;

(2) That such care shall be furnished only insofar as the net income derived from the amount deposited in the trust will permit; and

(3)(A) That not less than the following minimum amounts will be set aside and deposited in trust by the cemetery company:

(i) For land, but not including lawn crypts, fifty cents (50¢) per square foot of the land sold or twenty percent (20%) of total sales price, whichever is greater;

(ii) For a lawn crypt, twenty percent (20%) of the total sales price of the land excluding the lawn crypt, or fifty dollars (\$50.00), whichever is greater;

(iii) For a mausoleum, crypt or niche, not less than ten percent (10%) of the total sales price;

(iv) For the special care of any lot, grave, crypt, or niche or of a family mausoleum, memorial, marker or monument, the full amount received; and

(v) For a commodity, the full amount received for memorial care.

(B) Notwithstanding anything in chapter 1 of this title or this part to the contrary, any cemetery company depositing more than the required amounts in its improvement care trust fund, in accordance with prior statutory requirements or the provisions of its charter or contracts, shall be hereby authorized to continue to do so; provided, that deliberate advance payments

made to the improvement care fund shall not be credited toward any future liability.

(c) Every cemetery company shall be permitted to charge a fee for the memorial care of every commodity installed in the cemetery. Such fee shall not exceed ten cents (10¢) per square inch of the ground covered by the commodity. As of the end of each calendar year commencing with the year ending December 31, 1981, the cemetery company shall be permitted to increase its fee for the memorial care of commodities by no more than the percentage representing the consumer price index as of the end of such calendar year. The fee charged for memorial care of a commodity shall not exceed the fee charged by the cemetery company for installation of the commodity. The charge for memorial care of a commodity shall be the same to all regardless of the source of the commodity.

(d) Such setting aside and deposit shall be made by the cemetery company not later than thirty (30) days after the close of the month in which the final payment on the purchase price of each lot, grave space, crypt or niche, or the final payment for the general or special care of the lot, grave space, crypt, or niche, or of a family mausoleum, memorial, marker or monument is received; or the final payment for the memorial care of a commodity; such amounts deposited shall be held by the trustee of the improvement care funds of such cemetery in trust and perpetuity for the specific purposes stated in the written agreement. All deposits with a trustee by a cemetery company under this part shall be in cash only.

(e)(1)(A) The net earnings of each improvement care trust fund shall be paid to and be used and expended by the owners or officers and directors of the cemetery company, or by the trustee of the improvement care trust fund while the cemetery is not being operated by its owner, for the improvement care (as defined in § 46-1-102) of the cemetery or separate geographical location of the cemetery for which the fund was established and for no other purpose.

(B) "Net earnings," for purposes of this section, means:

(i) All net income excluding capital gains; and

(ii) Net capital gains, after payment of any federal income taxes thereon by the trust, as shown on the United States fiduciary income tax return for the fiscal year of the trust immediately preceding the date of payment hereunder, but only to the extent the amount of such payment of capital gains under this subdivision (e)(1)(B)(ii) when added to the payment under subdivision (e)(1)(B)(i) does not exceed five percent (5%) of the fair market value of the trust as of the last day of the trust fiscal year immediately preceding the date of payment hereunder.

(2) While a cemetery for which an improvement care trust has been funded is not being operated by its owner, the trustee may disburse net income from the trust to compensate any responsible person for work performed or expenses incurred in the improvement care of the cemetery. In investing these funds, the trustee shall exercise the judgment and care under the circumstances then prevailing which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income and

capital appreciation as well as the probable safety of their capital. Within the limitations of the foregoing standard, subject to any express provisions or limitations contained in any particular trust instrument, the trustee is authorized to acquire every kind of property, real, personal or mixed, and every kind of investment, specifically included, but not by way of limitation, corporate obligations of every kind, and stocks, preferred or common, which persons of prudence, discretion and intelligence acquire for their own accounts.

(f) No cemetery company shall commingle the improvement care funds for the benefit of one (1) cemetery with improvement care funds for the benefit of any other cemetery or with any other funds, and each separate geographical site of a cemetery shall have a separate improvement care fund. However, improvement care funds from more than one (1) cemetery may be commingled by trustees for investment purposes, so long as an accurate accounting is maintained for each individual fund.

(g) The improvement care trust fund shall not be a part of the assets of any cemetery company operating under this part and the improvement care trust fund shall not be subject to the debts of the cemetery company. [Acts 1927, ch. 75, § 1; mod. Code 1932, § 3923; Acts 1953, ch. 44, § 1; 1968, ch. 557, § 2; T.C.A. (orig. ed.), § 46-110; Acts 1976, ch. 773, § 7; 1978, ch. 605, § 1; 1978, ch. 708, § 6.04; T.C.A., §§ 46-210, 46-2-110; modified; Acts 1980, ch. 780, §§ 5-7; impl. am. Acts 1980, ch. 780, § 1; 1986, ch. 693, §§ 12-17; 1996, ch. 714, §§ 1, 2.]

Compiler's Notes. Acts 1927, ch. 75 was declared unconstitutional in *Spring Hill Cem. v. Lindsey*, 162 Tenn. 420, 37 S.W.2d 111 (1931).

Section to Section References. This section is referred to in §§ 46-1-105, 46-2-304 — 46-2-306, 46-2-308, 46-3-112.

Attorney General Opinions. Liability insurance for trust fund fiduciaries, OAG 97-013 (2/6/97).

Cited: State ex rel. Johnson v. Mount Olivet Cem. Co., 834 S.W.2d 306 (Tenn. Ct. App. 1992).

NOTES TO DECISIONS

ANALYSIS

1. Federal tax deductions.
2. Personal injury liability.

1. Federal Tax Deductions.

A cemetery corporation is not the beneficiary of a trust established by it under the provisions of this statute and is therefore not entitled to claim in its federal income tax returns the dividend deduction or bond interest exclusion on stock and bonds owned by the trust. Monte

Vista Burial Park v. United States, 340 F.2d 595 (6th Cir. 1965).

2. Personal Injury Liability.

Visitor in cemetery who walked through tall grass with knowledge that there were sunken graves in area could not recover for injuries sustained in fall into grave either at common law or on grounds that cemetery was not maintained as required by this section. *Mt. Olivet Cem. Co. v. Thomas*, 28 Tenn. App. 264, 189 S.W.2d 1 (1944).

DECISIONS UNDER PRIOR LAW

ANALYSIS

1. Constitutionality.
2. Nature of trust.
3. Tax treatment of fund.

1. Constitutionality.

Acts 1927, ch. 75, formerly compiled in this

section, which required cemetery to maintain an improvement fund by setting aside 25 percent of sums already paid to cemetery prior to enactment of law, was held to be unconstitutional in toto, as the valid parts of the act could not be saved by the application of the doctrine of elision. The object expressed in §§ 7, 9 and 10 of the act to penalize cemetery officers,

directors and stockholders for the acts and omissions of their predecessors, and to expropriate the substance of officers, directors and stockholders to corporate uses, violated Tenn. Const., art. I, §§ 8, 20. *Spring Hill Cem. v. Lindsey*, 162 Tenn. 420, 37 S.W.2d 111 (1931).

2. Nature of Trust.

The former section imposed a duty upon cemetery corporations to create a 25 percent (25%) perpetual care trust fund rather than a direct trust. *Memphis Mem. Park v. McCann*, 133 F. Supp. 293 (M.D. Tenn. 1955).

Contracts with purchasers of cemetery lots under cemetery corporation providing for the setting aside of 25 (25%) percent of the sale price for perpetual maintenance and care merely imposed a contract duty to create the fund and did not directly establish a trust. *Memphis Mem. Park v. McCann*, 133 F. Supp. 293 (M.D. Tenn. 1955).

3. Tax Treatment of Fund.

Sums representing 25 percent (25%) of sale price of lots received by cemetery corporation under contracts providing that corporation was to set same aside in a trust fund for perpetual maintenance and care, but which were not actually set aside, constituted income to the corporation. *Memphis Mem. Park v. McCann*, 133 F. Supp. 293 (M.D. Tenn. 1955).

Where cemetery corporation failed to pay 25 percent (25%) of sales into fund for perpetual care for the years of 1930 to 1941, but in 1942 issued notes to trust fund for the amount withheld due and payable over a period of years, the sums payable on the notes were deductible in the years in which paid, and were not deductible in the year in which the note was executed. *Memphis Mem. Park v. McCann*, 133 F. Supp. 293 (M.D. Tenn. 1955).

Collateral References. Duty as regards use of proceeds from sale of cemetery lots for care, maintenance, or improvement of cemetery. 124 A.L.R. 279.

Validity and reasonableness of regulations of cemetery company as to improvement or care of lots. 32 A.L.R. 1406; 47 A.L.R. 70.

46-2-303. Part applicable to mausoleums, crypts and columbariums.

— The provisions of this part also apply to all corporations, persons, or businesses except those corporations, persons or businesses owning and operating a cemetery which maintains an improvement care trust fund, and in which the mausoleum is to be, is being, or has been constructed, engaged in the construction and/or sale of mausoleums, crypts, columbariums or other structures constructed for public use, space in which is offered to the public by sale, and constructed wholly or partially above the surface of the ground or partly covered with earth or sod, for the purpose of permanently containing the dead or cremated remains of human bodies. [Acts 1963, ch. 202, § 1; 1968, ch. 557, § 2; T.C.A. (orig. ed.), § 46-120; T.C.A., §§ 46-220, 46-2-120.]

46-2-304. Sale of unconstructed or unfinished mausoleums, crypts and columbariums. — Any corporation, person, or business except those corporations, persons or businesses owning and operating a cemetery which maintains an improvement care trust fund, and in which the mausoleum is to be, is being, or has been constructed, engaged in the public sale of burial space in a mausoleum, crypt or columbarium, which is not completely constructed at the time of a sale, shall withhold the first seventy-five percent (75%) of the proceeds of such sale, to be placed in trust or invested under the provisions of this part, until such time as the mausoleum, crypt, or columbarium, space in which was sold, is completed. After completion the improvement care trust fund provided in § 46-2-302 shall apply to such completed structure. [Acts 1963, ch. 202, § 1; 1968, ch. 557, § 2; T.C.A. (orig. ed.), § 46-121; T.C.A., §§ 46-221, 46-2-121.]

46-2-305. Payment of dividends — Restrictions — Recovery. — No dividend, salary or compensation of any description shall be paid to any stockholder, officer, director or owners of any cemetery company until the company has first set up the improvement care trust fund in the manner and amount provided in § 46-2-302, and no such dividend, salary or compensation shall be paid to any stockholder, officer, director or owner of any cemetery company while any improvement care trust fund is declared by the commissioner to be deficient because of not having received the payments required by § 46-2-302; except that a receiver, as provided for in this chapter, may pay such salaries and compensation as the receiver may deem necessary to restore the cemetery to a sound financial condition. Any dividend, salary or commission so paid in violation of this section shall be recoverable at the suit of the commissioner, any lot owner, or descendant or next of kin of a lot owner, in the circuit or chancery court, and all stockholders, officers, directors and owners so receiving such unlawful dividends, salaries or compensation may be joined in the same suit. The proceeds of such suit or claim shall be added to the improvement care trust fund to assist in making it current. [Acts 1927, ch. 75, § 6; mod. Code 1932, § 3928; Acts 1968, ch. 557, §§ 2, 4; T.C.A. (orig. ed.), § 46-111; Acts 1976, ch. 773, § 8; T.C.A., §§ 46-211, 46-2-111.]

Compiler's Notes. Acts 1927, ch. 75 was declared unconstitutional in *Spring Hill Cem. v. Lindsey*, 162 Tenn. 420, 37 S.W.2d 111 (1931).

Section to Section References. This section is referred to in §§ 46-2-306, 46-2-309, 46-2-311.

46-2-306. Standard of cemetery care — Enforcement — Penalty for failure to maintain improvement care fund. — (a) As to matters within its reasonable control, a cemetery company shall maintain its cemeteries so as to reflect respect for the memory of the dead in keeping with the reasonable sensibilities of survivors of those whose remains are interred in such cemeteries.

(b)(1) The district attorney general in whose district a cemetery is situated may bring an action in chancery court to remedy any violation of this section on the petition of ten percent (10%) of, or twenty (20), lot owners and next of kin of lot owners, whichever is less; provided, that only one (1) survivor shall be qualified as a petitioner on account of kinship with one (1) deceased person.

(2) Upon finding that the cemetery is not being consistently maintained as provided in this section, the court shall appoint one (1) or more of the petitioners to perform the maintenance that it finds to have been neglected and assess the costs of same to the cemetery company.

(3) After compliance with this section has been achieved, the court shall discharge the appointed petitioner or petitioners; provided, that the cemetery company agrees to provide an appropriate level of maintenance henceforth.

(4) If the trustee of the improvement care trust fund for the benefit of the cemetery has been made a defendant in the action, the court may order the trustee to disburse the net income from the trust to the court or the appointed petitioner or petitioners, and allocate such income to the cost of the maintenance approved by the court.

(c) The officers of such cemetery company, and the directors thereof, commit a Class C misdemeanor if they fail to set up such twenty percent (20%)

improvement care trust fund; and they may all be jointly indicted in the same indictment. In addition, they shall be jointly liable at the suit of a lot owner, or descendant or next of kin of a lot owner, for the difference between the amount of the improvement care trust fund as set up by the company and what it should be if set up under the terms of § 46-2-302, plus interest thereon from the date the fund should have been set up. Any recovery under this section or § 46-2-305 shall be for the use of the company and shall be paid into the improvement care trust fund, so as to bring it up to the required amount. [Acts 1927, ch. 75, § 7; mod. Code 1932, § 3929; Acts 1968, ch. 557, §§ 2, 4; T.C.A. (orig. ed.), § 46-112; T.C.A., §§ 46-212, 46-2-112; Acts 1986, ch. 693, § 18; 1989, ch. 591, § 113; 2002, ch. 659, § 1.]

Compiler's Notes. Acts 1927, ch. 75 was declared unconstitutional in *Spring Hill Cem. v. Lindsey*, 162 Tenn. 420, 37 S.W.2d 111 (1931).

Amendments. The 2002 amendment substituted "twenty (20)" for "five hundred (500)" in (b)(1).

Effective Dates. Acts 2002, ch. 659, § 2. July 1, 2002.

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

1. **Constitutionality.**

The fact that a remedy for the enforcement of duties imposed upon cemetery corporations extends only to cemetery corporations organized

for profit does not render the act providing the remedy void as class legislation. *Spring Hill Cem. v. Lindsey*, 162 Tenn. 420, 37 S.W.2d 111 (1931).

46-2-307. Attorney's fees. — In addition to the liabilities declared, the suitor who so brings suit and recovers from a stockholder, director or officer of a company shall also recover reasonable attorney's fees, the amount of which shall be fixed and adjudged by the court before whom the case is tried. [Acts 1927, ch. 75, § 8; mod. Code 1932, § 3930; Acts 1968, ch. 557, §§ 2, 4; T.C.A. (orig. ed.), § 46-113; T.C.A., §§ 46-213, 46-2-113.]

Compiler's Notes. Acts 1927, ch. 75 was declared unconstitutional in *Spring Hill Cem. v. Lindsey*, 162 Tenn. 420, 37 S.W.2d 111 (1931).

46-2-308. Revocation of charter or certificate of authority. — Failure to comply with the provisions of § 46-2-202 or § 46-2-302 shall constitute grounds for the state to revoke the charter or certificate of authority of a corporate cemetery company. The revocation proceeding may be filed in the chancery court of the county where the cemetery is located, and may be brought on relation of the state or district attorney general. The court hearing such proceeding may order the seizure and sale of the cemetery company's assets to the extent necessary to set up the improvement care trust fund as required. If the court revokes the charter or certificate of authority, it may order the sale of the whole company property after the improvement care trust fund has been set up, so that the purchaser of the cemetery may continue to operate and maintain it under the terms of this part. The court may also award reasonable attorney's fees for the attorney representing the state in a proceed-

ing brought under this section. [Acts 1927, ch. 75, § 9; Code 1932, § 3931; Acts 1968, ch. 557, §§ 2, 4; T.C.A. (orig. ed.), § 46-114; T.C.A., §§ 46-214, 46-2-114; modified; Acts 1986, ch. 693, § 19.]

Compiler's Notes. Acts 1927, ch. 75 was declared unconstitutional in *Spring Hill Cem. v. Lindsey*, 162 Tenn. 420, 37 S.W.2d 111 (1931).

Section to Section References. This section is referred to in § 46-2-312.

46-2-309. Action by state for recovery of illegally paid dividends. —

(a) The state is authorized to recover from stockholders, for the use of the company, dividends illegally paid under § 46-2-305.

(b) The state is also authorized to recover from the officers and directors of the company, at any time, for the use of the company, an amount sufficient to bring the improvement care trust fund up to the twenty percent (20%) required, together with reasonable attorney's fees for the attorney handling such suit, to be fixed and adjudged by the court trying the case. [Acts 1927, ch. 75, § 10; Code 1932, § 3932; Acts 1968, ch. 557, §§ 2, 4; T.C.A. (orig. ed.), § 46-115; T.C.A., §§ 46-215, 46-2-115.]

Compiler's Notes. Acts 1927, ch. 75 was declared unconstitutional in *Spring Hill Cem. v. Lindsey*, 162 Tenn. 420, 37 S.W.2d 111 (1931).

46-2-310. Discontinuance or reduction of contributions to improvement fund — Determination. — (a) When the improvement care trust fund has become sufficiently large that the interest therefrom will ensure the permanent maintenance and upkeep of such cemetery, and the officers and board of directors are of the opinion that it is no longer necessary to continue to set aside the twenty percent (20%) to the improvement care trust fund, or any part thereof, for the purpose of maintaining, keeping up and beautifying such cemetery, the board of directors may, in regular or special meeting duly called, pass a resolution so declaring such belief.

(b) The cemetery company is then authorized to file a petition in the name of the company in the chancery court of the county where such cemetery is located, stating the passage of such resolution and such other pertinent facts as it may desire, and asking that the cemetery company no longer be required to continue to set up the improvement care trust fund or that it be relieved from setting up any part thereof which may appear proper to the company, and the petition so authorized shall be filed against the governor of the state and the attorney general and reporter, or the district attorney general of the county in which the petition is filed, in lieu of the attorney general and reporter, and it shall be the duty of the defendants to make such necessary and proper defense thereto as to them may appear proper.

(c) Upon the final hearing of the issues thus made up, the chancery court is authorized to pronounce such decree as in the opinion of the court from the proof and facts may appear proper, either refusing any relief whatsoever or granting all of the relief prayed for, or granting such partial relief as may to the court appear proper; and the case thus tried shall be kept on the docket of the court, subject to such further orders and decrees as may from time to time

appear proper under such additional showing as may be made under any supplemental petition filed either by the original complainants, or on behalf of the state, or by any lot owner, or descendant or next of kin of a lot owner, who may be entitled to any relief.

(d) The cost and expenses of the proceeding in subsections (a)-(c) shall be taxed against and paid by the complainant, including reasonable attorney's fees to the attorney making defense, to be fixed by the court. [Acts 1927, ch. 75, § 12; mod. Code 1932, § 3934; Acts 1968, ch. 557, §§ 2, 4; T.C.A. (orig. ed.), § 46-116; T.C.A., §§ 46-216, 46-2-116; modified.]

Compiler's Notes. Acts 1927, ch. 75 was declared unconstitutional in *Spring Hill Cem. v. Lindsey*, 162 Tenn. 420, 37 S.W.2d 111 (1931).

46-2-311. Deficiency in improvement care fund — Failure to file reports — Effect — Orders. — (a) The commissioner may, upon determining that a substantial deficiency exists in the improvement care fund or that a cemetery company has willfully failed to file annual reports as provided in § 46-2-204 of any cemetery or separate geographical site of a cemetery as required by this part, order the correction of such deficiency or failure to file upon such terms and conditions as the commissioner may determine to be appropriate.

(b) While the owner or operator of the cemetery or separate geographical location is in compliance with the terms and conditions of the order, the provisions of § 46-2-305 relative to the payment of dividends, salaries or compensation shall be suspended.

(c) Upon failure of the owner or operator of such cemetery or separate geographical site of a cemetery to correct the deficiency or failure to file as ordered, the commissioner may issue a conditional suspension of the certificate of registration required by § 46-1-103.

(1) Such conditional suspension shall be accompanied by an order to correct the deficiency within a stated time, not less than thirty (30) days after issuance of the order.

(2) A conditional suspension of the registration certificate shall not have the effect of interrupting the operation of the cemetery company; it being the purpose of this chapter to provide for an orderly transition from operation by the owner to operation by a receiver, in cases where trust fund deficiencies cannot otherwise be corrected.

(3) If the deficiency is corrected within the time limit stated, further action on the suspension or receivership shall be terminated; provided, that the termination of a suspension shall not be construed to prohibit further actions toward suspension or receivership if a deficiency is determined to exist at a later time.

(d) The commissioner is authorized, upon determining that a substantial deficiency exists in the improvement care fund, to order the cemetery company to correct the deficiency and also to pay to the improvement care fund an amount equal to ten percent (10%) of the deficiency. [Acts 1976, ch. 773, § 9; T.C.A., §§ 46-222, 46-2-122; Acts 1995, ch. 485, § 7.]

Section to Section References. This section is referred to in § 46-2-204.

46-2-312. Suspension of registration after substantial deficiency in improvement care trust fund — Appointment of receiver — Duties. —

(a) The chancery court, upon the petition of the commissioner, lot owner, descendant or next of kin of a lot owner, may, upon determining that a substantial deficiency exists in the improvement care trust fund of any cemetery or separate geographical site of a cemetery within the county, after proper notice to the cemetery owner or operator and all other appropriate parties, and after a hearing thereon, and if the owner or operator of each cemetery or separate geographical location is not operating in compliance with the terms and conditions of an order of the commissioner then in force and effect, proceed to make final the suspension of the registration certificate, and appoint a receiver to take charge of, control and manage the cemetery, or separate geographical site of a cemetery, until the deficiency has been eliminated.

(b) The receiver so appointed may employ the proceeds from the sale of lots, and all other saleable items and the income from the operation of the cemetery, over and above that portion due the improvement care trust fund, and other special care funds, and the amount reasonably necessary for the operation and maintenance of the cemetery business, to reduce the deficiency in the improvement care trust fund, upon such terms and conditions and in the manner deemed appropriate by the chancellor, taking into consideration the overall operation of the cemetery, and the interests of the lot owners, next of kin of lot owners, and descendants of lot owners and the general public. No person shall be eligible to serve as such receiver who is engaged in any of the allied businesses including, but not limited to, funeral directors, monument or vault dealers, florists, or their agents or employees.

(c) The chancellor shall, upon a showing that the deficiency in the improvement care trust fund has been eliminated, terminate the suspension of the certificate of registration, compensate the receiver, dissolve the receivership, and restore the management of the cemetery to its owner.

(d) Should it appear to the court that it is impossible to correct the deficiency in the improvement care fund, the court may proceed to order the sale of the cemetery as provided in § 46-2-308, or may otherwise order the termination of the use of the land as a cemetery as provided by law. [Acts 1976, ch. 773, § 10; T.C.A., §§ 46-223, 46-2-123.]

Section to Section References. This section is referred to in § 46-2-204.

NOTES TO DECISIONS

1. “Owner.”

The technical meaning of the term “owner” in subsection (c) is the holder of the registration

certificate issued by the commissioner. State ex rel. Johnson v. Mount Olivet Cem. Co., 834 S.W.2d 306 (Tenn. Ct. App. 1992).

46-2-313. Annual audit of improvement care trust funds. — The commissioner shall conduct an annual audit of cemetery improvement care trust funds. [Acts 1997, ch. 400, § 5.]

PART 4—CEMETERY MERCHANDISE AND SERVICES

46-2-401. Short title. — This part shall be known and may be cited as the “Cemetery Merchandise and Services Act of 1979.” [Acts 1979, ch. 307, § 1; T.C.A., § 46-2-201.]

Section to Section References. This part is referred to in § 46-1-107.

46-2-402. Sales of pre-need merchandise and services. — (a) Except as provided herein, no cemetery company as defined in this chapter shall directly or indirectly offer to or enter into a contract for the sale of merchandise or services to be used or performed in connection with the interment or commemoration of a deceased human being, if delivery of such merchandise, (other than for incidental additions, such as dates, scrolls, or other supplementary matter representing not more than ten percent (10%) of the total contract price), or performance of such services is to be made more than sixty (60) days after the receipt of any payment under such contract of sale. This provision includes, but is not limited to, the pre-need sales of merchandise and services as defined in this chapter.

(b) If a cemetery company enters into a contract for the sale of merchandise or services that provides for delivery thereof within sixty (60) days, and the cemetery company fails inexcusably to deliver such merchandise or services within one hundred twenty (120) days after the receipt of any payment under such contract, such cemetery company shall deposit to a merchandise and services trust account or a pre-need trust account established pursuant to § 46-2-403 all moneys received under the contract. For purposes of this part, “delivery” includes physical delivery of the merchandise to the buyer or, if stipulated in the sales contract, transfer to the buyer of a document of title (as defined in § 47-1-201) covering the merchandise; provided, that such merchandise shall be stored and insured at the seller’s expense until the date of shipment to the buyer or fifty (50) years from the date of the sales contract, whichever comes first.

(c) Nothing in this part shall be construed to apply to contracts for the sale of funeral merchandise and services, such contracts being regulated under title 62, chapter 5, and other general laws of this state. [Acts 1979, ch. 307, § 4(A); T.C.A., § 46-2-202; Acts 1986, ch. 693, § 20.]

Textbooks. Tennessee Jurisprudence, 5
Tenn. Juris., Cemeteries, § 9.

46-2-403. Pre-need sales contracts — Pre-need trust accounts. — (a) A sales contract shall be executed in duplicate, and a signed copy given to the purchaser. The contract shall contain the names of the purchaser and the seller and the name of any person, if other than the purchaser, who is to receive

the merchandise or services contracted for, and a description of the merchandise and services shall appear in the contract.

(b)(1) A pre-need sales contract shall be enforceable against the purchaser only if:

(A) The seller is a cemetery company owning or operating a duly registered cemetery under chapter 1 of this title; and

(B) The seller, within sixty (60) days following receipt of any consideration paid pursuant to such contract, deposits an amount equal to the procurement costs of the merchandise and services identified in the sales contract, plus twenty percent (20%) of such costs in a special general fund trust account in a state or national bank authorized by law to administer trust funds. If the sales contract provides for payment on an installment or deferred basis, the seller may elect to pay into the trust account the pro rata portion relating to procurement cost of each installment or deferred payment received, or to pay one hundred twenty percent (120%) of the procurement cost computed as of the date of sale.

(2) A separate general trust account shall be established and maintained for each cemetery owned or operated by a cemetery company, and each such account shall bear the additional legend, "pre-need trust account."

(c) All deposits required by this part shall be pursuant to a written trust agreement with the bank that holds the funds. The trust agreement shall:

(1) State the circumstances under which funds will be deposited and disbursed;

(2) Specify the trustee's fees (if any); and

(3) Provide that the trustee will furnish the trustor an accounting of general trust balances and earnings at least annually.

(d) Specific funds deposited in the trust account shall be identified or earmarked by contract number and the name of the purchaser. Nothing shall prevent the trustee from commingling the deposits in any trust fund for purposes of the management thereof or the investment of funds therein. The commissioner has the discretion to audit the records and the sources thereof tendered by the trustee and has full power, including power of subpoena, to inspect the records of the trustor. Failure to comply with the subpoena of the commissioner is a Class A misdemeanor.

(e)(1) For purposes of this part, procurement costs shall be the costs of the merchandise and services as of January 1 of the year in which the pre-need sales contract is executed. These costs shall be determined and substantiated by a wholesale price list of a manufacturer or supplier of the merchandise so sold or by a cost analysis or itemization of the cost of construction of lawn or mausoleum crypts sold by the cemetery company. The procurement costs so determined shall be the basis for the deposits required by subsection (b) and shall be adjusted and verified annually to the commissioner.

(2) For the purposes of this part, procurement costs for interment services, including, but not limited to, entombment and inurnment services, shall not be less than the following: one hundred fifty dollars (\$150) for interment services, one hundred dollars (\$100) for entombment services, and forty dollars (\$40.00) for inurnment services. The basis for determining the procurement costs for these interment services shall be provided to the commissioner annually and

verified at the time of audit. The commissioner shall increase such minimum costs by the consumer price index of each calendar year beginning on January 1, 2003.

(f) All deposits required by this part shall be in cash only.

(g)(1) With respect to pre-need sales of mausoleum crypts, the seller may, in lieu of depositing one hundred twenty percent (120%) of procurement costs, elect to set aside a crypt in inventory comparable to each crypt sold prior to construction; provided, that:

(A) The seller establishes and maintains a record of crypts in inventory reduced by the number set aside under this subsection; and

(B) The sales contract conveys interment rights or temporary interment rights pending completion of the crypt sold prior to construction.

(2) Subject to such setting aside, the seller shall at all times maintain its pre-need trust account in the amount required by subsection (b).

(h) The seller shall offer the purchaser the option to pay any applicable sales or use tax on the selected merchandise or services at the time the contract is entered into. If the purchaser chooses to pay the tax, it shall be remitted to the department by the seller, and shall be considered full payment for the sales or use tax on the selected merchandise or services despite any changes in tax rate or cost of merchandise or services which may occur by the time of actual use. If the purchaser later cancels the pre-need contract, the amount of tax paid shall be refunded by the seller who may then claim that amount as a credit against any sales or use tax then due from the seller. [Acts 1979, ch. 307, §§ 4(B), 4(D); T.C.A., § 46-2-203; Acts 1986, ch. 693, §§ 2, 21; 1989, ch. 591, §§ 1, 6; 1996, ch. 958, § 1; 2002, ch. 685, § 1.]

Code Commission Notes. The misdemeanor in this section has been designated as a Class A misdemeanor by authority of § 40-35-110, which provides that an offense designated a misdemeanor without specification as to category is a Class A misdemeanor. See also § 39-11-114.

Compiler's Notes. Acts 2002, ch. 685, § 2 provided that, notwithstanding any other provision of law to the contrary, no operator or business licensed pursuant to title 46 shall violate any provision of the Federal Trade Act, U.S. Code title 15, relative to the sale of prear-

ranged funeral plans or burial services.

Amendments. The 2002 amendment added (e)(2).

Effective Dates. Acts 2002, ch. 685, § 3. May 1, 2002.

Cross-References. Penalty for Class A misdemeanor, § 40-35-111.

Section to Section References. This section is referred to in §§ 46-2-402, 46-2-404, 46-2-410.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Cemeteries, § 9.

46-2-404. Disposition of trust funds. — (a) The trust funds, including the income therefrom after payment of any appropriate trustee fees, commissions and costs, shall remain intact until the merchandise is delivered or the services performed as specified in the sales contract. However, a seller may, upon proper certification to the trustee, withdraw specific funds previously deposited if no deposit was required by § 46-2-403(b). Upon complete performance of the services or delivery of the merchandise specified in the sales contract, the seller shall certify the same to the trustee by affidavit. Upon the receipt of such certification, the amount of specific funds in the trust account identified to the delivered merchandise or the performed services, including any income or interest earned therefrom and not paid pursuant to subsection

(b), shall be paid to the seller. The trustee may rely upon all such proper certifications herein required to be made and shall not be liable to anyone for such reliance.

(b) Notwithstanding the provisions of subsection (a), the trustee shall pay the trustor, at the trustor's option, the net income accumulated as of the end of any fiscal year; provided, that the trust assets after disbursement of income shall not have a market value of less than one hundred twenty percent (120%) of the aggregate of the procurement costs of all merchandise and services for which deposits are held in trust (subject to proration allowed under § 46-2-403(b)). The seller must exercise its option by delivering to the trustee a notarized certification of such procurement costs as of the first day of its current fiscal year.

(c) Any specified funds held on behalf of a purchaser, which have been dormant for a period of seventy-five (75) years since the time of deposit or last withdrawal against such moneys, may be considered to be closed accounts against which no further demand will be made by the purchaser, and such principal amount may be paid by the trustee to the seller's improvement care trust. [Acts 1979, ch. 307, § 4(C); T.C.A., § 46-2-204; Acts 1986, ch. 693, § 22.]

Textbooks. Tennessee Jurisprudence, 5
Tenn. Juris., Cemeteries, § 9.

46-2-405. Construction of crypts. — A cemetery company shall commence construction or development of any undeveloped ground or building in which lawn or mausoleum crypts are to be constructed and in which sales, contracts for sale, or agreements for sales, are being made, within thirty-six (36) months after the date of the first such sale. The construction or development of such undeveloped ground or building shall be substantially completed within five (5) years after the date of such sale. Failure to so commence or substantially complete construction, as represented at the time of such sale, shall entitle any purchaser, on demand, to recover all sums paid on the purchase price, plus interest thereon at the rate of six percent (6%) per annum; provided, that any delay caused by strike, shortage of materials, civil disorder or natural disaster, or any like occurrence beyond the control of the cemetery company or seller, shall extend the time of such commencement or completion by the length of such delay. [Acts 1979, ch. 307, § 4(D); T.C.A., § 46-2-205.]

46-2-406. Satisfaction of contract — Cancellation of contract — Substitution of merchandise or services. — (a) If, for any reason a cemetery company, that has entered into a contract for the sale of merchandise or services and has made the deposit into the trust funds as herein required, cannot or does not provide the merchandise or perform the services called for by the contract within a reasonable time upon request, the purchaser, or the purchaser's heirs or assigns, or duly authorized representatives, shall have the right to provide such merchandise or services; and, having done so, shall be entitled to receive the deposit to the credit of that particular contract. Written instructions to the trustee by the cemetery company directing the trustee to refund the amount of money on deposit, or an affidavit by either the purchaser, or one (1) of the purchaser's heirs or assigns, or duly authorized representative,

stating that the merchandise or services were not provided, shall be sufficient authority for the trustee to make refund of the funds on deposit to the person submitting the affidavit. However, nothing herein contained shall relieve the cemetery company from any liability for nonperformance of the contract.

(b) If the purchaser should be in default in making payments under such sales contract for a period of twelve (12) consecutive months, the cemetery company shall have the right to cancel the contract and to withdraw from the trust fund the entire balance to the credit of the defaulting purchaser's account as liquidated damages. In such event, the trustee shall deliver such balance to the cemetery company upon its certification of such default by the purchaser and upon receiving the certification, the trustee may rely thereon and shall not be liable to anyone for such reliance.

(c) In the event that the purchaser, or the purchaser's heirs or assigns, or authorized representatives, should desire to substitute merchandise or services different from that which is specified in the sales contract because of changed conditions or practices in burial customs, the cemetery company shall give credit to the extent of all moneys already paid toward the payment of the substituted merchandise or services; provided, that the original sales contract has not been completed. [Acts 1979, ch. 307, § 4(E); T.C.A., § 46-2-206.]

46-2-407. Violations — Penalties — Enforcement. — (a) Any cemetery company or seller who, having received any moneys under or in connection with such a sales contract, fails to deposit or keep on deposit such moneys as required herein, or who fails to substantially perform the contract described in this part, commits a Class C misdemeanor.

(b) In addition to other remedies, the commissioner may, upon determining that a substantial deficiency related to transactions that occurred after July 1, 1986, exists in any trust account required under this part, order the liquidation of such deficiency upon such terms and conditions as the commissioner may determine to be appropriate. If the deficiency has not been liquidated as ordered, the commissioner may bring an action in chancery court to recover the amount of the trust deficiency. Upon finding that a substantial deficiency exists, the court may appoint a receiver to operate the cemetery or, if necessary, order the seizure and sale of the assets of the cemetery company, to the end that the trust be made whole. The court may also award reasonable attorney's fees for the attorney representing the commissioner in an action brought under this section; provided, that the commissioner may not impose any penalty or bring any action against any person, firm or corporation that purchased a cemetery prior to July 1, 1986, with respect to a deficiency in any trust account required under this part related to transactions that occurred prior to July 1, 1986. [Acts 1979, ch. 307, § 4(F); T.C.A., § 46-2-207; Acts 1986, ch. 693, § 23; 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

46-2-408. Waiver invalid. — Any provision of any contract for the sale of merchandise or the performance of services herein contemplated which pur-

ports to waive any of the provisions of this part shall be null and void. [Acts 1979, ch. 307, § 4(G); T.C.A., § 46-2-208.]

46-2-409. Applicability of part. — (a) Nothing in this part shall apply to cemeteries exempt under the provisions of § 46-1-106.

(b) Notwithstanding any provision herein to the contrary, the provisions of this part shall apply only to contracts executed subsequent to July 1, 1979. [Acts 1979, ch. 307, §§ 4(G), 6; T.C.A., § 46-2-209.]

46-2-410. Trust account reports required — Inspection of trust account records. — (a)(1) Not later than seventy-five (75) days after the end of each of its fiscal years, each cemetery company that engages in sales requiring the establishment of a trust account under this part shall file with the commissioner on the prescribed form a report containing:

(A) Beginning balances of deposited funds and accumulated earnings in the trust account;

(B) The deposits to the trust account during the year;

(C) The amount of earnings during the year;

(D) The amounts of the withdrawals of deposits and earnings remaining in trust at the end of the year; and

(E) The aggregate procurement costs, including transportation and labor, of all merchandise and services sold pre-need and yet to be delivered after the report year end; provided, that procurement costs may be prorated to the extent allowed under § 46-2-403(b).

(2) The commissioner may require a cemetery company to submit reasonably detailed information in support of any report required under this section.

(b) Not later than seventy-five (75) days after the end of the cemetery company's fiscal year, each trustee appointed under this part shall file with the commissioner on the prescribed form a report on each trust account established pursuant to this part. The report shall contain the following information:

(1) The combined beginning balance of deposits and earnings in trust;

(2) The aggregate amount of deposits received during the report year;

(3) The amount of the earnings added to the trust account during the year;

(4) The aggregate amount of deposits and earnings disbursed during the report year; and

(5) The aggregate amount of the deposits and earnings remaining in trust at the end of the report year.

(c) For late filing of a report required under this section, a cemetery company shall pay a penalty of fifty dollars (\$50.00) for each of the first three (3) months (or fraction thereof), and one hundred dollars (\$100) for each succeeding month thereafter (or fraction thereof) the report has not been filed. The commissioner may, in extenuating circumstances, grant an extension of time for filing such report, and waive the penalty, on receipt of a written request before the report is overdue.

(d) If, on or before the date that a report would otherwise be due hereunder, a cemetery company notifies the commissioner that it has delivered all merchandise and services due for which a trust account was required, the company need not file such report.

(e) The commissioner shall promulgate and may from time to time revise rules and regulations for carrying out the intentions of this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The commissioner shall require an annual audit to ensure that each person, firm, or corporation which offers or enters into a contract for the sale of merchandise or services under this chapter will be able to perform its contract with the purchaser.

(f) The necessary expenses for any examination pursuant to this section shall be paid by the cemetery company at a rate set by the commissioner. [Acts 1986, ch. 693, § 24; 1992, ch. 922, § 7; 1997, ch. 400, § 4.]

Cross-References. Treble damages upon proof of fraud relative to contract for future services, § 62-5-409.

46-2-411. Fraud as to preneed sales contract. — In civil actions in which the prevailing party proves fraud relative to a preneed sales contract for cemetery merchandise and services under this part, such prevailing party shall receive treble damages, together with attorney fees, costs, and interest. [Acts 1997, ch. 400, § 3.]

Cross-References. Fraud as to contract for future services, § 62-5-409.

Cited: Concrete Spaces, Inc. v. Sender, 2 S.W.3d 901 (Tenn. 1999).

CHAPTER 3

MANAGEMENT AND REGULATION OF CEMETERIES

SECTION.

46-3-101. Definitions.

46-3-102. Municipal corporations empowered to act as trustees of cemeteries.

46-3-103. Rules and regulations.

46-3-104. Day and night guards — Appointment by managers or trustees.

46-3-105. Oath of guards and other employees and agents.

46-3-106. Guards and other employees and agents to exercise police powers.

SECTION.

46-3-107. Power to arrest.

46-3-108. Guards to wear star or medal.

46-3-109. Action of trespass for damage.

46-3-110. Escheat of lots to cemetery owner.

46-3-111. Suit for escheat — Notice — Parties.

46-3-112. Hearing and decree of escheat.

46-3-113. Contracts for the sale of commodities.

46-3-114. Funds to maintain cemeteries.

46-3-101. Definitions. — As used in this chapter, unless the context otherwise requires:

(1) “Commodity” includes, but is not limited to, memorials consisting of permanent monuments or gravemarkers of marble, granite or bronze, bronze plaques, or bronze vases, and foundations or footings of such memorials; and

(2) “Consumer price index” means the consumer price index (all items — United States city average), as published by the United States department of labor, bureau of labor statistics. [Acts 1980, ch. 780, § 10; T.C.A. § 46-3-113.]

Compiler’s Notes. Former § 46-3-101, relating to municipal corporations empowered to

act as trustees of cemeteries, was transferred to § 46-3-102 in 2000.

46-3-102. Municipal corporations empowered to act as trustees of cemeteries. — Each incorporated municipality is given the power to be and

act as trustee to the same extent as a natural person for cemeteries or burial places for the dead located within the territorial limits of such municipal corporation, or within five (5) miles of such limits, when it is selected and appointed as such trustee by any person or court of competent jurisdiction. [Acts 1915, ch. 51, § 1; Shan., § 3053a1; Code 1932, § 5373; T.C.A. (orig. ed.), § 46-301; T.C.A. § 46-3-101.]

Compiler's Notes. Former § 46-3-102, relating to rules and regulations, was transferred to § 46-3-103 in 2000.

Cross-References. Vandalism, § 39-14-408.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Cemeteries, § 7.

Comparative Legislation. Regulation of cemeteries:

Ala. Code § 11-17-1 et seq.

Ark. Code § 20-17-901 et seq.

Ga. O.C.G.A. § 44-3-130 et seq.

Ky. Rev. Stat. Ann. § 381.690 et seq.

Miss. Code Ann. § 41-43-31 et seq.

Mo. Rev. Stat. § 214.010 et seq.

N.C. Gen. Stat. § 65-1 et seq.

Va. Code § 57-22 et seq.

NOTES TO DECISIONS

1. Power of Municipality.

Power is conferred on municipality to hold property in trust for those entitled to interment

therein. *Town of Pulaski v. Ballentine*, 153 Tenn. 393, 284 S.W. 370 (1926).

Collateral References. 14 Am. Jur. 2d Cemeteries § 3.

14 C.J.S. Cemeteries § 3.

Liability of cemetery in connection with conducting or supervising burial services. 42 A.L.R.4th 1059.

Recoverability of compensatory damages for

mental anguish or emotional distress for breach of service contract. 54 A.L.R.4th 901.

Regulations in relation to cemeteries, generally. 96 A.L.R.3d 921.

Trust for burial grounds, power of municipal corporation or other political body to hold land in. 10 A.L.R. 1372.

46-3-103. Rules and regulations. — (a)(1) The owner of every cemetery may make, adopt and enforce rules and regulations for:

(A) The use, care, control, management, restriction and protection of such cemetery, and of all parts and subdivisions of such cemetery;

(B) Restricting, limiting and regulating the use of all property within such cemetery;

(C) Regulating and preventing the introduction and care of plants or shrubs within such grounds;

(D) Regulating the conduct of persons and preventing improper assemblages therein; and

(E) All other purposes deemed necessary by the owner of the cemetery for the proper conduct of the business of the cemetery and the protection or safeguarding of the premises and the principles, plans and ideas on which the cemetery was organized;

and from time to time may amend, add to, revise, change, modify or abolish such rules and regulations.

(2) The owner of the cemetery may prescribe penalties for the violation of any such rule or regulation, which penalties may be recovered by the owner of the cemetery in a civil action.

(3) Such rules and regulations shall be plainly printed or typewritten, posted conspicuously and maintained, subject to inspection and copy at the

usual place for transacting the regular business of the cemetery; provided, that no cemetery to which the provisions of chapters 1 and 2 of this title are applicable has the power to adopt any rule or regulation in conflict with any of the provisions of such chapters 1 and 2 of this title or in derogation of the contract rights of lot owners.

(b)(1) The owner of every cemetery has the further right to establish reasonable rules and regulations regarding the type material, design, composition, finish, and specifications of any and all commodities to be used or installed in the cemetery. Such rules and regulations shall be posted conspicuously and maintained, subject to inspection and copy at the usual place for transacting the regular business of the cemetery. No cemetery owner has the right to prevent the use of any commodity purchased by a lot owner, or the owner's representative, agent, or heirs or assigns from any source; provided, that the use meets such rules.

(2) A cemetery owner shall be permitted to prohibit the installation of a commodity by noncemetery personnel; provided, that the fee charged by the cemetery owner for installation of such commodity does not exceed ten cents (10¢) per square inch of the ground covered by such commodity. As of the end of each calendar year, the cemetery owner shall be permitted to increase the fee for the installation of commodities by no more than the percentage representing the consumer price index as of the end of such calendar year. The charge for installation of a commodity by the cemetery owner shall be the same to all, regardless of the source of the commodity. The cemetery owner shall install all commodities furnished from sources other than the cemetery within thirty (30) days of the receipt of such commodity, weather permitting.

(3) If the fee charged by a cemetery owner for installation of a commodity exceeds the fee scale described in subdivision (b)(2), then the cemetery owner must permit installation of the commodity by noncemetery personnel if requested by the lot owner, or the owner's representative, agent, or heirs or assigns. If noncemetery personnel are permitted to install a commodity, they shall not be denied reasonable access to the lot or grave space for the purpose of installing or servicing the commodity. The cemetery owner shall not deny information pertinent to the place of burial and respective grave location or installation location of the commodity. Such information shall be furnished within a reasonable period of time after receipt of request for information. The cemetery owner shall not charge for furnishing the information necessary for the proper installation of the commodity. The cemetery owner shall not charge for services not performed. The cemetery owner shall not charge a permit fee, gate fee, or access fee to any noncemetery personnel seeking to install a commodity.

(4) All cemetery owners shall have a full and complete schedule of all charges for services provided by the cemetery plainly printed or typewritten, posted conspicuously and maintained subject to inspection and copy at the usual place for transacting the regular business of the cemetery.

(5) The provisions of this subsection shall not apply to cemeteries described in § 46-1-106; provided, that such cemeteries do not engage in the sale of memorials consisting of permanent monuments or gravemarkers of marble,

granite or bronze, bronze plaques, or bronze vases. [Acts 1873, ch. 94, § 4; Shan., § 3053; mod. Code 1932, § 5372; Acts 1968, ch. 557, § 3; T.C.A., § 46-302; Acts 1980, ch. 780, §§ 8, 9; T.C.A. 46-3-102.]

Compiler's Notes. Former § 46-3-103, relating to appointment by managers or trustees of day and night guards, was transferred to § 46-3-104 in 2000.

Cross-References. Containers for remains of persons not more than twelve (12) years old at death, § 68-4-112.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Cemeteries, §§ 7, 8.

Collateral References. Monuments, vaults and the like, validity and construction of regulations as to, by cemetery company. 174 A.L.R. 977.

Validity and reasonableness of regulations of cemetery company as to improvements or care of lots. 32 A.L.R. 1406; 47 A.L.R. 70.

46-3-104. Day and night guards — Appointment by managers or trustees. — The managers or trustees have power to appoint, at their own expense, as many day and night guards of their grounds as they may deem expedient. [Acts 1873, ch. 94, § 5; Shan., § 3054; Code 1932, § 5374; T.C.A. (orig. ed.), § 46-303; T.C.A. § 46-3-104.]

Compiler's Notes. Former § 46-3-104, relating to oath of guards and other employees and agents, was transferred to § 46-3-105 in 2000.

46-3-105. Oath of guards and other employees and agents. — Such guards, and also all of the superintendents, gardeners, agents, and gatekeepers, stationed on the grounds, are authorized to take and subscribe, before any mayor or magistrate of the town or county where such cemetery is situated, an oath of office similar to the oath required by law of constables. [Acts 1873, ch. 94, § 5; Shan., § 3055; Code 1932, § 5375; T.C.A. (orig. ed.), § 46-304; T.C.A. § 46-3-104.]

Compiler's Notes. Former § 46-3-105, relating to guards and other employees and agents to exercise police powers, was transferred to § 46-3-106 in 2000.

46-3-106. Guards and other employees and agents to exercise police powers. — Upon taking such oath, such guards, superintendents, gardeners, agents, and gatekeepers shall have and exercise all the powers of police officers within the cemetery and within one hundred (100) yards of the cemetery grounds. [Acts 1873, ch. 94, § 5; Shan., § 3056; Code 1932, § 5376; T.C.A. (orig. ed.), § 46-305; T.C.A. § 46-3-105.]

Compiler's Notes. Former § 46-3-106, relating to power to arrest, was transferred to § 46-3-107 in 2000.

Section to Section References. This section is referred to in § 46-3-106.

46-3-107. Power to arrest. — The employees listed in § 46-3-105 have the power, and it is their duty, to arrest all persons engaged in violating the laws and rules in force for the protection of cemeteries in, or within one hundred (100) yards of the same, and to bring such persons so offending before any court or magistrate of competent jurisdiction, to be dealt with according to law. [Acts 1873, ch. 94, §§ 4, 5; 1881, ch. 166, § 1; integrated in Shan., § 3057; Code 1932, § 5377; T.C.A. (orig. ed.), § 46-306; T.C.A. § 46-3-106.]

Compiler's Notes. Former § 46-3-107, relating to guards wearing stars or medals, was transferred to § 46-3-108 in 2000.

46-3-108. Guards to wear star or medal. — The guards appointed shall wear a star or medal to designate their authority. [Acts 1873, ch. 94, § 5; Shan., § 3058; mod. Code 1932, § 5378; T.C.A. (orig. ed.), § 46-307; T.C.A. § 46-3-107.]

Compiler's Notes. Former § 46-3-108, relating to action of trespass for damage, was transferred to § 46-3-109 in 2000.

46-3-109. Action of trespass for damage. — All offenders shall be liable, in an action of trespass in the name of the managers or trustees, to pay all such damages as have been occasioned by their unlawful acts, which money, when recovered, shall be applied by the managers or trustees to the reparation of the property injured or destroyed. [Acts 1873, ch. 94, § 6; Shan., § 3059; Code 1932, § 5379; T.C.A. (orig. ed.), § 46-308; T.C.A. § 46-3-108.]

Compiler's Notes. Former § 46-3-109, relating to escheat of lots to cemetery owner, was transferred to § 46-3-110 in 2000.

This section may be superseded by the uniform disposition of unclaimed property law compiled in title 66, ch. 29, part 1. See §§ 66-29-104, 66-29-109, 66-29-110, 66-29-112 and 66-29-132.

Cross-References. Vandalism, § 39-14-408.

Section to Section References. This section is referred to in § 6-54-113.

Collateral References. Action at law for desecration of grave, monuments and tombstones. 77 A.L.R.4th 108.

46-3-110. Escheat of lots to cemetery owner. — In order to facilitate a more efficient and economical system for caring for and maintaining and improving cemeteries owned and operated by municipalities, corporations and associations within the state of Tennessee, it is hereby provided that after March 21, 1955, all vacant cemetery lots and grave spaces owned by any person dying intestate without issue and leaving no known relatives entitled by the law of descent to the cemetery lots and grave spaces shall escheat to the municipalities, corporations, associations or other owners of a cemetery where vacant lots and grave spaces exist, owned by any person dying testate without devising the same, and leaving no lawful heirs, as the case may be, entitled by law to take the same, or where the devisees or heirs are incapable of taking the same and where there are no lawful heirs as the case may be. [Acts 1955, ch. 279, § 1; T.C.A., § 46-309; T.C.A. § 46-3-109.]

Compiler's Notes. Former § 46-3-110, relating to parties and notice of suit for escheat, was transferred to § 46-3-111 in 2000.

This section may be superseded by the uni-

form disposition of unclaimed property law compiled in title 66, ch. 29, part 1. See §§ 66-29-104, 66-29-109, 66-29-110, 66-29-112 and 66-29-132.

46-3-111. Suit for escheat — Notice — Parties. — In all cases where any such municipalities, corporations, associations or other owners of cemeteries have a good right to believe any vacant cemetery lots or grave spaces have escheated to it, such municipalities, corporations, associations or other owners are hereby empowered to bring suit for the escheated property and shall make

defendants to its bill filed in such cause the personal representative of the deceased, if known, and all other persons who are in possession or in any manner or way claim any interest in or to such vacant cemetery lots or grave spaces; and if parties are residents of the state, they shall be served with process; if nonresidents of the state, they shall be made parties by publication, according to law. In addition to the foregoing named defendants under the bill, there shall be publication made for thirty (30) days in a newspaper in the county in which the bill is filed, or if no newspaper is published in the county, then in the nearest newspaper so published, calling upon unknown heirs of such deceased person claiming under such deceased person, in any manner or way, whatever, to enter an appearance as defendants to the bill or suit, and all persons having an interest in the same may come into court and defend the same according to the rule of the court. [Acts 1955, ch. 279, § 2; T.C.A., § 46-310; T.C.A. § 46-310.]

Compiler's Notes. Former § 46-3-110, relating to hearing and decree of escheat, was transferred to § 46-3-111 in 2000.

This section may be superseded by the uni-

form disposition of unclaimed property law compiled in title 66, ch. 29, part 1. See §§ 66-29-104, 66-29-109, 66-29-110, 66-29-112 and 66-29-132.

46-3-112. Hearing and decree of escheat. — In determining the escheat of any such vacant cemetery lots or grave spaces to any municipalities, corporations, associations or other owners of cemeteries, the court shall hear proof, and if satisfied that it would be best for the vacant cemetery lots or grave spaces to escheat, shall decree accordingly. [Acts 1955, ch. 279, § 3; T.C.A., § 46-311; T.C.A. § 46-3-111.]

Compiler's Notes. Former § 46-3-112, relating to contracts for the sale of commodities, was transferred to § 46-3-113 in 2000.

This section may be superseded by the uni-

form disposition of unclaimed property law compiled in title 66, ch. 29, part 1. See §§ 66-29-104, 66-29-109, 66-29-110, 66-29-112, and 66-29-132.

46-3-113. Contracts for the sale of commodities. — (a)(1) A contract for the sale of a commodity shall be executed in duplicate and a signed copy given to the purchaser. The contract shall fully and conspicuously disclose in simple and readily understood language the terms and conditions of such contract.

(2) The contract shall specifically state the purchase price of the commodity, the installation fee, and any charge for memorial care of the commodity made pursuant to § 46-2-302.

(b) The provisions of this section do not apply to cemeteries described in § 46-1-106, providing such cemeteries do not engage in the sale of memorials consisting of permanent monuments or gravemarkers of marble, granite, or bronze, bronze plaques, or bronze vases. [Acts 1980, ch. 780, § 11; T.C.A. § 46-3-112.]

Compiler's Notes. Former § 46-3-113, relating to the definitions of the management and regulation of cemeteries, was transferred to § 46-3-101 in 2000.

Cross-References. Purposes for which appropriations are authorized, § 5-9-101.

46-3-114. Funds to maintain cemeteries. — (a) Notwithstanding any other provision of the law to the contrary, upon a majority vote of the county legislative body, a county may draw upon its general fund and may solicit, receive and utilize funds from any and all other sources, public or non-public for the purpose of rehabilitating or maintaining dilapidated or abandoned cemeteries, or portions thereof, subject to the limitations imposed by subsection (b). Such maintenance may include:

(1) Clearing vegetation or debris as appropriate, planting and otherwise improving the premises, cutting the grass upon and raking and cleaning cemetery plots at reasonable intervals;

(2) Repairing and preserving the drains, water lines, roads, fences, statues, fountains and other structures;

(3) Securing, maintaining or reconstructing the necessary records of lot ownership and burials;

(4) Resetting or straightening tipped gravemarkers, monuments or memorials; or

(5) Replacing damaged gravemarkers, monuments or memorials.

(b) The provisions of this section shall not be construed to authorize any such county to utilize such funds to maintain cemeteries or portions thereof which are presently maintained adequately or which maintain a sufficient improvement care trust fund pursuant to chapters 1 and 2 of this title. [Acts 1980, ch. 814, § 1.]

Attorney General Opinions. Use of public funds to maintain private roads to private cemeteries, OAG 99-097 (4/27/99).

CHAPTER 4

TERMINATION OF USE OF LAND AS CEMETERY

SECTION.

46-4-101. Grounds affected — Facts which justify termination of use.

46-4-102. "Interested persons" defined.

46-4-103. Suits for termination of use of land, removal and reinterment and

SECTION.

for disposal of land — Municipal authority extended.

46-4-104. Granting of relief — Provisions for reinterment.

46-4-101. Grounds affected — Facts which justify termination of use.

— This chapter, which is enacted for the public welfare in the exercise of the police powers of the state of Tennessee, applies to any burial ground in the state of Tennessee, including any land owned or controlled by cemetery companies, which the court to which jurisdiction is given by this chapter finds, for any of the reasons hereinafter stated, is unsuitable for its use as such and as a resting place for the dead whose remains are buried therein, or the further use of which for such purposes the court finds, for any of such reasons, is inconsistent with due and proper reverence or respect for the memory of the dead or otherwise unsuitable for such purposes, the reasons being:

(1) The burial ground having been abandoned; or

(2) The burial ground being in a neglected or abandoned condition; or

(3) The existence of any conditions or activities about or near the burial ground which the court finds render the further use of same for the purposes

aforementioned inconsistent with due and proper reverence or respect for the memory of the dead, or for any other reason unsuitable for such purposes. [Acts 1949, ch. 15, § 1; C. Supp. 1950, §§ 3936.1, 5379.1 (Williams, § 9720.1); modified; T.C.A. (orig. ed.), § 46-401.]

Cross-References. Discovery of human remains, required notice, § 11-6-107.

Section to Section References. This chapter is referred to in §§ 11-6-107, 11-6-116.

This section is referred to in § 46-4-104.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Cemeteries, § 11.

Comparative Legislation. Termination of cemetery:

Ala. Code § 11-47-60 et seq.

Ark. Code §§ 20-17-905, 20-17-907 et seq.

Ga. O.C.G.A. § 44-5-211.

Ky. Rev. Stat. Ann. § 381.720.

Miss. Code Ann. § 21-37-21.

Mo. Rev. Stat. § 214.010 et seq.

N.C. Gen. Stat. § 143B-128.

Va. Code § 57-36 et seq.

Cited: *Sequoyah v. TVA*, 480 F. Supp. 608 (E.D. Tenn. 1979).

NOTES TO DECISIONS

1. Interested Persons.

Individual Native Americans, without proof of blood relationship to ancient Native American remains and without interest in the real property involved, and the Tennessee Commission of Indian Affairs, were neither “interested persons” nor did the Indians and the Commission have standing under T.C.A. §§ 46-4-101 — 46-4-104 so as to be added to department’s suit to terminate the property’s use as a cemetery and relocate the remains. *State ex rel. Comm’r*

of Transp. v. Medicine Bird Black Bear White Eagle, 63 S.W.3d 734 (Tenn. Ct. App. 2001).

Where the state filed a petition for termination of use of land as a cemetery pursuant to T.C.A. § 46-4-101 et seq., nonparties were not permitted to intervene and the court dismissed counter petition filed by nonparties. *State v. Any & All Parties With An Interest In Prop. Identified As Tax Map 158*, — S.W.3d —, 2003 Tenn. App. LEXIS 448 (Tenn. Ct. App. June 23, 2003).

Collateral References. 14 Am. Jur. 2d Cemeteries §§ 21 to 24, 33, 39, 40.

14 C.J.S. Cemeteries § 20.

Continued use of property for burial purposes as a condition subsequent of a conveyance or dedication of land for that purpose. 47 A.L.R. 1174.

Measure of damages for condemnation of lands of cemetery. 42 A.L.R.3d 1314.

Private cemetery, transfer, surrender or loss of rights in. 130 A.L.R. 259; 75 A.L.R.2d 591.

Cemeteries ⇌ 14.

46-4-102. “Interested persons” defined. — “Interested persons,” as used in this chapter, means any and all persons who have any right or easement or other right in, or incident or appurtenant to, a burial ground as such, including the surviving spouse and children, or if no surviving spouse or children, the nearest relative or relatives by consanguinity of any one (1) or more deceased persons whose remains are buried in any burial ground. [Acts 1949, ch. 15, § 2; C. Supp. 1950, § 5379.2 (Williams, § 9720.2); T.C.A. (orig. ed.), § 46-402.]

NOTES TO DECISIONS

1. Persons Not Covered.

Where the state sought permission of the court to disinter ancient Native American remains located on state property under T.C.A. § 46-4-102, neither individual Native Americans seeking to intervene nor the commission of

Indian affairs qualified as “interested persons” entitled to be made parties to this proceeding. *State v. Any & All Parties With An Interest In Prop. Identified As Tax Map 158*, — S.W.3d —, 2003 Tenn. App. LEXIS 448 (Tenn. Ct. App. June 23, 2003).

46-4-103. Suits for termination of use of land, removal and reinterment and for disposal of land — Municipal authority extended. —

(a) Any interested person or persons, and/or any county in this state in which any such burial ground is situated, and/or any municipality in this state if any such burial ground is situated in such municipality or within one (1) mile of the lawful corporate limits thereof and not beyond the limits of the county in which any part of any such municipality is situated and not within the lawful corporate limits of any other municipality in Tennessee, may bring or join in a suit in the chancery court of the county in which any such burial ground is situated, for the following purpose or purposes:

(1) To have the remains of all deceased persons buried in such ground removed therefrom and reburied in a suitable repository to be obtained for that purpose before their removal from such burial ground;

(2) To terminate the use of, and all rights and easements to use, such ground as a burial ground, and all rights and easements incident or appurtenant to the ground as a burial ground; and

(3) Thereupon, to partition or sell for partition the ground if the court finds that it belongs to two (2) or more persons and if any one (1) or more of the owners thereof shall apply for such partition. The authority of all municipalities in the state of Tennessee is extended, for the sole purpose of bringing or joining in any such suit by any such municipality, but for no other purpose, to a distance of one (1) mile from the lawful corporate limits thereof but not beyond the limits of the county in which any part of any such municipality is situated and not so as to come within the lawful corporate limits of any other municipality of the state of Tennessee.

(b) In any such suit, all interested persons who are not complainants shall be made defendants, and the owner or owners of the land or of any right of reversion or other right or interest therein, if such owner or owners shall be or include other than the interested persons, shall also be made defendants. Interested persons who are minors or otherwise incompetent or under disability may become complainants by guardian or next friend. All known defendants who are minors or otherwise incompetent or under disability shall be represented by guardian ad litem. Nonresident and unknown defendants may be proceeded against by order of publication, and publication, in the manner provided by law. [Acts 1949, ch. 15, § 3; mod. C. Supp. 1950, § 5379.3 (Williams, § 9720.3); T.C.A. (orig. ed.), § 46-403.]

Section to Section References. This section is referred to in § 46-4-104.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Cemeteries, § 11.

46-4-104. Granting of relief — Provisions for reinterment. — Such removal and reinterment, and other relief described in § 46-4-103, including partition or sale for partition if prayed for and if the court finds the conditions for partition exist as provided in § 46-4-103, shall be granted, authorized, decreed and ordered by the court upon the court finding, upon the hearing of the cause upon the entire record, including the pleadings and proof, that any one (1) or more of the reasons specified in § 46-4-101 exist, and that, due to the same, the burial ground is unsuitable for use as a burial ground and as a resting place for the dead whose remains are buried therein, or that the further

use thereof for those purposes is inconsistent with due and proper reverence or respect for the memory of the dead, or for any other reason unsuitable for those purposes; but the removal and reinterment and such other relief shall be granted, authorized, ordered and decreed only upon it being shown to the satisfaction of the court that definite arrangements have been made, or before the removal will be made, for reinterment of all of the remains in a place found by the court to be suitable for such reinterment; that for such purpose there have been obtained, or before the removal there will be obtained, either the fee simple title to the place of reinterment or adequate permanent right and easement to use the same for such reinterment, and adequate permanent right and easement of access thereto for visitation; that the removal and reinterment of all the remains will be done with due care and decency, and that suitable memorial or memorials will be erected at the place of reinterment. [Acts 1949, ch. 15, § 4; C. Supp. 1950, § 5379.4 (Williams, § 9720.4); T.C.A. (orig. ed.), § 46-404.]

Textbooks. Tennessee Jurisprudence, 5
Tenn. Juris., Cemeteries, § 11.

CHAPTER 6

VETERANS' CEMETERIES

SECTION.

46-6-101. Establishment.
46-6-102. Acceptance and use of funds.
46-6-103. Application for federal grant.

SECTION.

46-6-104. Construction — Expenditure of funds.

46-6-101. Establishment. — (a) The department of veterans' affairs shall provide for Tennessee veterans' cemeteries.

(b) It is the legislative intent that the department, in consultation with the select joint committee on veterans' affairs, the department of finance and administration and other appropriate state departments and agencies shall, within existing state resources, identify any available state owned real property and other available financial resources to establish a veterans' cemetery in each of the three (3) grand divisions of the state. [Acts 1987, ch. 309, § 1.]

Cross-References. Grand divisions of state, title 4, ch. 1, part 2.

Section to Section References. This section is referred to in § 46-6-104.

Comparative Legislation. Veterans' cemeteries:

Ark. Code § 20-81-107.

Ga. O.C.G.A. § 38-4-70 et seq.

Mo. Rev. Stat. § 42.010.

N.C. Gen. Stat. § 65-41 et seq.

Va. Code § 2.1-739 et seq.

Collateral References. 14 Am. Jur. 2d Cemeteries § 3.

14 C.J.S. Cemeteries § 2; 81A C.J.S. States § 147.

46-6-102. Acceptance and use of funds. — (a) The department of veterans' affairs is authorized to accept any private or public funds, including appropriations, to effectuate the purposes of this chapter.

(b) The department is further authorized to use any funds or other assistance made available to the department to effectuate the purposes of this chapter. [Acts 1987, ch. 309, § 1.]

46-6-103. Application for federal grant. — In establishing Tennessee veterans' memorial cemeteries, it is the intention of the general assembly that the state shall apply for a grant from the United States administrator of veterans' affairs pursuant to the provisions of Public Law 95-476, 92 Stat. 1504, and the department of veterans' affairs is hereby authorized to submit such an application on behalf of the state of Tennessee. [Acts 1987, ch. 309, § 2.]

Compiler's Notes. Public Law 95-476, 92 Stat. 1504, referred to in this section, is codified as 38 U.S.C. § 1008.

46-6-104. Construction — Expenditure of funds. — The provisions of this chapter shall not be construed to be an appropriation of funds and no funds shall be obligated or expended pursuant to this chapter unless such funds are specifically appropriated by the General Appropriations Act or otherwise made available in accordance with § 46-6-101. [Acts 1987, ch. 309, § 3.]

CHAPTER 7

TRUSTS FOR PERPETUAL CARE OF PRIVATE CEMETERIES

SECTION.

46-7-101. Legislative intent.

46-7-102. Cemetery trust corporation — Purpose, powers, exemptions — Charter and capital stock.

46-7-103. Board of directors — Administration — Investments.

SECTION.

46-7-104. Purpose of trust — Expenditures for perpetual care.

46-7-105. Contributions — Gifts of land.

46-7-101. Legislative intent. — (a) The general assembly recognizes that the operation of a cemetery is a public purpose and further recognizes that the proper maintenance of a cemetery or burial grounds, whether private or public, is in the interest of the public health and safety serving a valid public purpose.

(b) A trust created for the perpetual care or improvement of a cemetery or graves lessens the burden of government and, therefore, is found and declared to be a charitable trust. To that end, the general assembly declares its support for the establishment and formation of a trust corporation to act as trustee of a charitable trust for the perpetual care of private cemeteries. [Acts 1989, ch. 222, § 1.]

Section to Section References. This chapter is referred to in § 67-2-104.

Comparative Legislation. Perpetual trusts for care of private cemeteries:

Ala. Code § 11-17-13 et seq.

Ark. Code § 20-17-1001 et seq.

Ga. O.C.G.A. § 44-3-134 et seq.

Miss. Code Ann. § 41-43-37 et seq.

Mo. Rev. Stat. § 214.130.

N.C. Gen. Stat. § 65-7 et seq.

Va. Code § 54.1-2301 et seq.

Collateral References. 14 Am. Jur. 2d Cemeteries § 18 et seq.

70 C.J.S. Perpetuities § 43.

Validity, construction, and application of statutes or ordinances regulating perpetual-care trust funds of cemeteries and mausoleums. 54 A.L.R.5th 681.

46-7-102. Cemetery trust corporation — Purpose, powers, exemptions — Charter and capital stock. — (a)(1) A trust corporation, which

shall be chartered as a not-for-profit general welfare corporation under the laws of Tennessee, may be formed for the sole purpose of administering and providing fiduciary services for a trust created for the perpetual care of a private cemetery, thereby benefiting all the citizens of this state.

(2) The services performed by a trust corporation formed under this chapter are necessarily services not otherwise generally available for such purposes, and the commissioner of financial institutions shall exempt such corporation from any requirement of title 45, chapters 1 and 2, or the rules of the department of financial institutions, which would threaten the viability of the corporation, including, without limitation, capitalization requirements, fees, and procedures which are not essential to the protection of the interests of the trust beneficiaries.

(3) The trust corporation shall file its charter with the secretary of state and shall also record its charter in the office of the register of deeds in the county in which its principal office is located. The trust corporation's existence shall continue until terminated by law.

(4) It is not the purpose of such corporation to engage in commercial banking activity or private fiduciary activity, except to the limited extent of acting in a fiduciary capacity for a person who creates a trust for the perpetual care of a private cemetery and specifically designates a trust corporation formed under this chapter to serve in the capacity as trustee.

(5) A trust corporation formed under this chapter must use the word "cemetery" in its corporate title and may not advertise its services in such a manner as to represent that the corporation is a general fiduciary trust company.

(b) In addition to the general duties and powers of corporations formed under the laws of Tennessee, a trust corporation formed under this chapter is authorized to:

- (1) Accept funds and gifts of land for the benefit of such trust;
- (2) Enter into contracts, trust agreements, and other fiduciary instruments;
- (3) Adopt, use and display a corporate seal;
- (4) Adopt and amend bylaws, rules and regulations for carrying out the purpose of this chapter;
- (5) Manage and invest money and other property for the benefit of the trust;
- (6) Act in a fiduciary capacity for a person creating a trust for the perpetual care of a private cemetery who specifically designates the trust corporation to act as trustee; and
- (7) Have such powers as are necessary and convenient to carry out the purpose for which the trust corporation is organized, including, without limitation, any necessary and appropriate actions to associate with or participate in transactions through the federal reserve system.

(c) As the trust corporation is formed for a valid public purpose and will exercise its powers for the benefit of the state, the trust corporation, its capital stock, all properties at any time owned or held by it in a fiduciary capacity, and income derived from the trust funds until the corpus exceeds fifty thousand dollars (\$50,000) shall be exempt from taxation by the state or any local unit, or subdivision or instrumentality of the state.

(d) Any capital stock of the trust corporation shall be held by the members of the board of directors and their successors in office, by virtue of their incumbency in such offices. [Acts 1989, ch. 222, § 2.]

Collateral References. Validity, construction, and application of statutes or ordinances regulating perpetual-care trust funds of cemeteries and mausoleums. 54 A.L.R.5th 681.

46-7-103. Board of directors — Administration — Investments. —

(a) The trust corporation shall have a board of directors as provided in the document which creates the trust to be administered by such corporation. The board shall also serve as trustee of such trust. The directors and their successors shall be appointed in the manner provided in such document.

(b) The trust document shall also provide for the administration and maintenance of the trust funds and the manner in which funds shall be received and invested by the board acting as trustees for the trust, as well as the manner in which the real property may be conveyed to such trust for burial purposes to be irrevocably committed to the use for which it is conveyed. Unless the trust document otherwise provides, investments of the trust funds shall be essentially the same as those authorized for the investment of trust funds in accordance with title 35, chapter 3. [Acts 1989, ch. 222, § 3.]

Collateral References. Validity, construction, and application of statutes or ordinances regulating perpetual-care trust funds of cemeteries and mausoleums. 54 A.L.R.5th 681.

46-7-104. Purpose of trust — Expenditures for perpetual care. —

(a) Any trust created for the perpetual care of a private cemetery to be administered by a trust corporation formed under the provisions of this chapter shall be a charitable trust for the general welfare of the citizens of the state. The board of directors of such trust corporation shall establish guidelines for disbursement which are not inconsistent with this chapter or the trust document under which it operates as trustee for the trust.

(b) The corpus and income from the investment of the trust for the perpetual care of a private cemetery shall be expended solely for the purpose of providing such perpetual care in accordance with this chapter and the respective trust agreement, except that reasonable expenses for administration of the trust may be deducted from the income. [Acts 1989, ch. 222, § 4.]

Collateral References. Validity, construction, and application of statutes or ordinances regulating perpetual-care trust funds of cemeteries and mausoleums. 54 A.L.R.5th 681.

46-7-105. Contributions — Gifts of land. — Any person, association, or corporation may make contributions to the trust corporation for the benefit of the trust pursuant to this chapter, and the trust corporation is authorized to accept funds and deposit such funds in such trust. In addition, the trust corporation is authorized to accept gifts of land for the benefit of such trust as provided in this chapter. Gifts of land shall be made in the name of the trust corporation with appropriate language of limitation. [Acts 1989, ch. 222, § 5.]

Collateral References. Validity, construction, and application of statutes or ordinances regulating perpetual-care trust funds of cemeteries and mausoleums. 54 A.L.R.5th 681.

CHAPTER 8

FAMILY BURIAL GROUNDS PROTECTION

SECTION.

46-8-101. Short title.

46-8-102. Definitions.

46-8-103. Duty to protect graves or crypt —

Disturbances prohibited —
Transfer of remains.

46-8-101. Short title. — This chapter shall be known and may be cited as the “Family Burial Grounds Protection Act.” This chapter is intended to provide notice to buyers of property with known burial grounds and gravesites. It does not remove any protection to those sites under existing law. [Acts 1996, ch. 921, § 1.]

Law Reviews. 1996 Real Estate Legislation: What You Don’t Know *Can* Hurt You (William R. Bruce), 32 No. 6 Tenn. B.J. 12 (1996).

46-8-102. Definitions. — As used in this part, unless the context otherwise requires:

- (1) “Crypt” has the same meaning as used in § 46-1-102(8);
- (2) “Gravesite” means a space of ground used for lawful interment of a deceased person; and
- (3) “Human remains” or “remains” has the same meaning as used in § 46-1-102(10). [Acts 1996, ch. 921, § 2.]

46-8-103. Duty to protect graves or crypt — Disturbances prohibited — Transfer of remains. — (a) A deed for real property which indicates the presence of a gravesite or crypt containing human remains on the property conveyed obligates the immediate and future buyer or buyers of the property to protect such gravesite or crypt from disturbance. The owner of real property has the responsibility for taking appropriate action, prior to conveying such property, to ensure that the deed reflects the presence of the gravesite or crypt on such property.

(b) Real property which has a deed that reflects the presence of human remains on the property is protected from disturbance or development as follows:

- (1) A gravesite may not be disturbed in the area of ten feet (10’) surrounding the perimeter of the gravesite; and
- (2) A crypt may not be disturbed in the area of five feet (5’) surrounding the perimeter of the crypt.

(c) The owner of real property which has a deed that reflects the presence of human remains on the property has the option of transferring the remains, at the owner’s expense, pursuant to the procedure for termination of use as a cemetery in chapter 4 of this title. Upon complete transfer of all human remains from such property which are properly described on the deed, the buyer has the right to the use of the area previously containing the remains as is consistent for the remainder of the property. [Acts 1996, ch. 921, § 3.]

TITLE 55
MOTOR AND OTHER VEHICLES

CHAPTER 8

OPERATION OF VEHICLES—RULES OF THE ROAD

SECTION.

55-8-183. Funeral processions.

55-8-183. Funeral processions. — (a) Funeral processions properly identified by a flashing amber light on the lead vehicle or led by a properly identified escort shall have the right-of-way on any street, highway, or road through which they may pass, subject to the following provisions:

(1) The operator of the leading vehicle in a funeral procession shall comply with stop signs and traffic-control signals, but when the leading vehicle has progressed across an intersection in accordance with such signal or after stopping as required by the stop sign, all vehicles of such procession may proceed without stopping regardless of the sign or signal when each of such vehicles has its headlights lighted;

(2) Vehicles in a funeral procession shall drive on the right-hand side of the roadway and shall follow the vehicle ahead as close as is practical and safe;

(3) Operators of vehicles in a funeral procession shall yield the right-of-way to an authorized emergency vehicle giving audible signal by siren and shall yield the right-of-way when directed to do so by a traffic officer;

(4) On public highways and interstates, vehicles in a funeral procession shall proceed at a minimum speed of forty-five miles per hour (45 mph); and otherwise, on streets and roads at a speed not to exceed five miles per hour (5 mph) below the posted speed;

(5) Vehicles following a funeral procession on a two-lane highway may not attempt to pass such procession; and

(6) No operator of a vehicle shall drive between vehicles in a properly identified funeral procession except when directed to do so by a traffic officer.

(b) Motorcycle escorts of properly identified funeral processions may:

(1) Notwithstanding § 55-8-182(c) or any other provision of law to the contrary, operate a motorcycle between lanes of traffic or between adjacent lines or rows of vehicles;

(2) Notwithstanding § 55-9-201 or any other provision of law to the contrary, install a bell, siren, or exhaust whistle of a type approved by the sheriff of the county in which the motorcycle is to be operated; provided, that such system is deactivated at all times the motorcycle is not escorting a properly identified funeral procession; and

(3) Notwithstanding § 55-9-402 or any other provision of law to the contrary, install a green strobe flashing light system of a type approved by the sheriff of the county in which the motorcycle is to be operated; provided, that such system is deactivated at all times the motorcycle is not escorting a properly identified funeral procession.

(c)(1) Unless complying with the specific order of a law enforcement officer, no operator of a motor vehicle shall knowingly:

(A) Fail to yield the right-of-way to a properly identified funeral procession progressing across an intersection in accordance with the provisions of subdivision (a)(1);

(B) While following a properly identified funeral procession along a two-lane street, road or highway, pass or attempt to pass a properly identified funeral procession; or

(C) Drive or attempt to drive between the vehicles within a properly identified funeral procession.

(2) Each violation of this subsection (c) is punishable by a civil penalty not to exceed fifty dollars (\$50.00).

(3) For purposes of this subsection (c), to be a “properly identified” funeral procession, such procession must be indicated by a flashing amber light and a auditory signaling device mounted on the lead vehicle or by other properly identified escort, and a flag or other appropriate marking device on each vehicle in the procession indicating that such vehicle is part of the funeral procession.

(4) Any county or municipality may adopt the provisions of this subsection (c) for properly identified funeral processions within its jurisdiction by a two-thirds ($\frac{2}{3}$) vote of the legislative body of such county or municipality. If a county or municipality adopts the provisions of this subsection (c), the presiding officer of such legislative body shall proclaim and certify its adoption to the secretary of state. [Acts 1978, ch. 498, § 1; T.C.A., § 59-884; Acts 1999, ch. 450, § 3; 2000, ch. 691, § 1; 2001, ch. 50, § 1; 2002, ch. 509, §§ 1, 2; 2003, ch. 72, § 1.]

Attorney General Opinions. If a constable is escorting a funeral for a private party, the constable should take care not to convey the impression that the service is being performed in an official capacity; thus, the constable

should not perform such services while in uniform or driving an official car using red or blue flashing lights and/or a siren, OAG 02-116 (10/18/02).

NOTES TO DECISIONS

1. Generally.

The statute imposed no specific duties upon the officer assigned to escort a funeral procession; however, that does not mean that the

defendant has no duty to provide the escort in a safe manner. *Anderson v. City of Chattanooga*, 978 S.W.2d 105 (Tenn. Ct. App. 1998).

TITLE 56

INSURANCE

CHAPTER 7

POLICIES AND POLICYHOLDERS

SECTION.

PART 2—GENERAL PROVISIONS — LIFE INSURANCE

56-7-206. Life insurance — Proof of death for small policies.

PART 2—GENERAL PROVISIONS — LIFE INSURANCE

56-7-206. Life insurance — Proof of death for small policies. — In the case of any life insurance policy with a value of seven thousand five hundred dollars (\$7,500) or less, proof of death may be furnished by submission of a photocopy of the certificate of death, accompanied by a sworn statement by the doctor who signed the certificate or the funeral director who conducted burial services that the certificate is authentic. [Acts 1976, ch. 586, § 1; T.C.A., § 56-1172; Acts 1991, ch. 137, § 1.]

CHAPTER 34

BURIAL INSURANCE

SECTION.

56-34-101 — 56-34-104. [Repealed or obsolete.]
56-34-105. Designation of funeral director by insurer.
56-34-106. Payments in legal tender only.
56-34-107. Contracts with undertakers by insurers.
56-34-108. Contracts for funeral merchandise or service.

SECTION.

56-34-109. Revocation of license — Grounds.
56-34-110. Penalty for violations.
56-34-111. Provision for injunctive relief against violations of §§ 56-34-105 — 56-34-109.

56-34-101 — 56-34-104. [Repealed or obsolete.]

Code Commission Notes. Former §§ 56-34-102 — 56-34-104 (Acts 1949, ch. 58, §§ 2-4; mod. C. Supp. 1950, §§ 6459.59-6459.61 (Williams, §§ 6459.75-6459.77); T.C.A.(orig. ed.), §§ 56-3202 — 56-3204), concerning enforcement of contracts, violations, investigations, injunctive relief, and penalties, were deleted by the code commission in 1989 as obsolete.

Compiler's Notes. Former § 56-34-101 (Acts 1949, ch. 58, § 1; C. Supp. 1950, § 6459.58 (Williams, § 6459.74); T.C.A. (orig. ed.), § 56-3201) concerning burial insurance contracts for burials and services exceeding \$100 in price, was repealed by Acts 1987, ch. 132, § 1.

56-34-105. Designation of funeral director by insurer. — It is unlawful for any life insurance company, fraternal benefit society or other similar company, association or society issuing insurance policies, contracts or certificates upon the lives of citizens of this state, to designate in the policy contract,

or certificate, or otherwise, the person, firm or corporation to conduct the funeral of the insured, or to organize, promote or operate any enterprise or plan, or to enter into any contract with such insured or with any other person, which plan or contract tends to limit or restrict the freedom of choice in the open market of the person or persons having the legal right of such choice regarding contracts, purchases and arrangements with reference to any part of a funeral service for such insured. [Acts 1955, ch. 195, § 1; T.C.A., § 56-3205.]

Cross-References. Contracts for future funeral services, title 62, ch. 5, part 4.

Funeral directors and embalmers, title 62, ch. 5.

Section to Section References. Sections

56-34-105 — 56-34-109 are referred to in §§ 56-34-106, 56-34-109 — 56-34-111.

Law Reviews. Preneed Funeral Contracts in Tennessee, 11 Mem. St. U.L. Rev. 231.

56-34-106. Payments in legal tender only. — (a) It is unlawful for any life insurance company, fraternal benefit society or similar company, association or society issuing life insurance policies, contracts or certificates upon the lives of citizens of this state, to provide therein that the face amount thereof, or any loss or indemnity, which may accrue thereunder, shall be payable in anything other than legal tender of the United States and of this state to the beneficiary named therein or the legal representative of such insured; and any provision to the contrary shall be null and void.

(b) Nothing in §§ 56-34-105 — 56-34-110 shall affect contracts in force on March 16, 1955. [Acts 1955, ch. 195, § 2; T.C.A., § 56-3206.]

NOTES TO DECISIONS

ANALYSIS

1. Unlawful methods of payment.
2. — Funeral insurance.

1. Unlawful Methods of Payment.

2. —Funeral Insurance.

Contracts whereby funeral home agreed for a

consideration to furnish funeral merchandise and services in contemplation of death were insurance contracts and unlawful under this section. *State ex rel. Long v. Mynatt*, 207 Tenn. 319, 339 S.W.2d 26 (1960).

56-34-107. Contracts with undertakers by insurers. — It is unlawful for any life insurance company, fraternal benefit society, association or similar company, or any person, firm or corporation engaged in writing any type of life insurance, by whatever term described, upon the lives of citizens of this state, to enter into any contract with any funeral director, or undertaker, providing that such funeral director, or undertaker, shall conduct the funeral of persons insured by such insurance company, fraternal benefit society, or similar company. This section shall not be construed to prohibit any beneficiary under a policy from assigning such policy to an undertaker of the beneficiary's choice after death of the insured has occurred and liability has accrued. [Acts 1955, ch. 195, § 3; T.C.A., § 56-3207.]

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Cemeteries, § 9.

Law Reviews. Preneed Funeral Contracts in Tennessee, 11 Mem. St. U.L. Rev. 231.

Cited: *Garrett v. Forest Lawn Mem. Gardens, Inc.*, 505 S.W.2d 705 (Tenn. 1974); *Garrett v. Forest Lawn Mem. Gardens, Inc.*, 588 S.W.2d 309 (Tenn. Ct. App. 1979).

56-34-108. Contracts for funeral merchandise or service. — (a) It is unlawful for any life insurance company, fraternal benefit society or similar company or association, engaged in writing any type of life insurance by whatever name called, upon the lives of citizens of this state, to enter into any contract with any citizens of this state, contracting and agreeing to furnish funeral merchandise or services upon the death of any person insured.

(b) It is further unlawful for any person, firm or corporation to issue any policy or certificate, or to enter into any contract, conditioned to take effect on the death of any person, wherein such person, or the personal representative, heirs or next of kin of such person, is promised any rebate, discount or reduction in price for or on account of funeral merchandise, expenses or services by virtue of such person being issued such policy or certificate, or being designated as beneficiary therein, or by virtue of such person entering into such contract or being designated therein as the recipient of any such rebate, discount or reduction in price. [Acts 1955, ch. 195, § 4; 1959, ch. 293, § 1; T.C.A., § 56-3208.]

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Cemeteries, § 9; 15 Tenn. Juris., Insurance, §§ 4, 16.

Law Reviews. Preneed Funeral Contracts

in Tennessee, 11 Mem. St. U.L. Rev. 231.

Attorney General Opinions. Discounts on both pre-need and at-need funeral services, OAG 96-017 (2/15/96).

NOTES TO DECISIONS

ANALYSIS

1. In general.
2. Constitutionality.
3. Burden of proof.

1. In General.

In suit against burial association, court held this section allows funeral directors to contract with individuals for burial merchandise on pre-need basis subject to statutory limitations, but prohibits associations from doing so and also prohibits individual funeral directors from issuing pre-need discount certificates. *Garrett v. Forest Lawn Mem. Gardens, Inc.*, 505 S.W.2d 705 (Tenn. 1974).

2. Constitutionality.

Provisions of 1959 amendment prohibiting

contracts, policies or certificates offering funeral merchandise, expenses or services at a reduced rate upon the death of any person related to insurance contracts and such classification was reasonable and constitutional. *State ex rel. Long v. Mynatt*, 207 Tenn. 319, 339 S.W.2d 26 (1960).

3. Burden of Proof.

Where cemetery corporation was enjoined from selling contracts in violation of §§ 56-34-105 — 56-34-108, in proceeding for contempt for violation of the injunction it was not necessary to prove that there was a promise of a discount, but only that the defendant was engaged in violation of the first paragraph of this section. *Garrett v. Forest Lawn Mem. Gardens, Inc.*, 588 S.W.2d 309 (Tenn. Ct. App. 1979).

56-34-109. Revocation of license — Grounds. — Any violation of the provisions of §§ 56-34-105 — 56-34-110 by any life insurance company, fraternal benefit society, association or similar company, or agent thereof, shall be grounds for the revocation by the commissioner of commerce and insurance of the license granted to the company, association, or society, or to the agent. [Acts 1955, ch. 195, § 5; T.C.A., § 56-3209.]

56-34-110. Penalty for violations. — Any person, firm or corporation violating any of the provisions of §§ 56-34-105 — 56-34-110 commits a Class C misdemeanor. [Acts 1955, ch. 195, § 6; T.C.A., § 56-3210; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

56-34-111. Provision for injunctive relief against violations of §§ 56-34-105 — 56-34-109. — In addition to any other penalties or remedies provided by law, the commissioner, or any person damaged or who is threatened with loss or damage, by reason of a violation of §§ 56-34-105 — 56-34-109, as herein amended, may maintain a suit in any court of equitable jurisdiction having jurisdiction over the parties, for injunctive relief against such violations, and such courts shall have the power to grant such relief. [Acts 1959, ch. 293, § 2; impl. am. Acts 1971, ch. 137, § 2; T.C.A., § 56-3211.]

TITLE 62

PROFESSIONS, BUSINESSES AND TRADES

CHAPTER 5

FUNERAL DIRECTORS AND EMBALMERS

SECTION.

PART 1—GENERAL PROVISIONS

- 62-5-101. Chapter definitions.
- 62-5-102. Persons exempt from chapter.
- 62-5-103. Penalty for violations.
- 62-5-104. Description of funeral merchandise.
- 62-5-105. Hearings and judicial review.
- 62-5-106. Advertisements.
- 62-5-107. Utilization of licensed crematory facilities by funeral directors — Penalty for violation — Limited civil liability.
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PART 1—GENERAL PROVISIONS

62-5-101. Chapter definitions. — As used in this chapter, unless the context otherwise requires:

(1) “Authorizing agent or agents” means a person or persons legally entitled to authorize the cremation of a dead human body or body parts. This term shall not include a funeral director or funeral establishment;

(2) “Board” means the board of funeral directors and embalmers;

(3) “Cremation” means the heating process by which a human body or body parts are reduced to bone fragments through combustion and evaporation;

(4) “Crematory” means the building or portion of a building that houses one (1) or more cremation chambers used for the reduction of body parts or bodies of deceased persons to cremated remains and the holding facility. “Crematory” includes crematorium;

(5) “Embalming” means the preservation and disinfection, restoration or attempted preservation or disinfection, of dead human bodies by the application of chemicals externally or internally, or both;

(6)(A) “Funeral directing” means the:

(i) Practice of directing or supervising funerals or the practice of preparing dead human bodies for burial by any means, other than by embalming, or the disposition of dead human bodies;

(ii) Making of arrangements to provide for funeral services and/or the selling of funeral merchandise, and/or the making of financial arrangements for the rendering of the services, and/or the sale of such merchandise;

(iii) Provision or maintenance of a place for the preparation for disposition or for the care or disposition of dead human bodies;

(iv) Use of the word or term “funeral director,” “undertaker,” “mortician,” “funeral parlor,” “funeral chapel” or any other word or term from which can be implied the practice of funeral directing; or

(v) Holding out to the public that one is a funeral director or engaged in a practice herein described;

(B) For the purposes of this chapter, the following are exempted from the definition of “funeral directing”:

(i) The sale, maintenance and beautification of grave spaces;

(ii) The sale, installation and maintenance of permanent grave and/or crypt markers;

(iii) The opening and closing of a grave and/or crypt, the provision of the necessary grave and/or crypt equipment required for the final interment and/or entombment of casketed human bodies and/or cremated human remains;

(iv) The sale and maintenance of crypts constructed of permanent material as an integral part of a group of crypts which are constructed on the site of intended use in a cemetery; and

(v) The sale and maintenance of above ground mausoleum crypts;

(C) Nothing in this section shall be construed as in conflict with § 46-2-101;

(7) “Funeral establishment” means any business, whether a proprietorship, partnership, firm, association or corporation, engaged in arranging, directing, or supervising funerals for profit or other benefit; or the preparing of dead human bodies for burial; or the disposition of dead human bodies; or the provision or maintenance of place for the preparation for disposition; or for the care or disposition of human dead bodies;

(8) “Licensee” means an embalmer or funeral director who holds a license issued by the board;

(9) “Licensing period” means the period of time that a funeral director’s or embalmer’s license is in effect in Tennessee;

(10) “Resident trainee” or “apprentice” means a person who is engaged in learning to practice as a funeral director or embalmer, as the case may be, under the personal supervision and instruction of a duly licensed funeral director or embalmer of the state of Tennessee under the provisions of this chapter; and

(11) “State funeral directors association” means the Tennessee Funeral Directors Association or the Tennessee Funeral Directors and Morticians Association, a corporation. [Acts 1951, ch. 13, § 2 (Williams, § 7140.2); Acts 1968, ch. 542, § 1; 1972, ch. 553, § 1; T.C.A. (orig. ed.), § 62-501; Acts 1997, ch. 275, § 1; 2002, ch. 809, § 1.]

Amendments. The 2002 amendment added present (1), (3) and (4), and redesignated the remaining subdivisions accordingly.

Effective Dates. Acts 2002, ch. 809, § 4 provided that the act take effect June 11, 2002 for the purpose of promulgating rules and regulations, and that for all other purposes, the act takes effect July 1, 2002.

Cross-References. Burial insurance, title 56, ch. 34.

Cemetery merchandise and services, title 46, ch. 2, part 4.

Liability of professional societies, ch. 50, part 1 of this title.

Recipients of dead bodies to be notified of communicable diseases and AIDS, § 68-5-102.

Reports of certain injuries, § 38-1-101.

Rigid containers not mandatory for remains of certain children, § 68-4-112.

Section to Section References. This chapter is referred to in §§ 46-2-402, 62-5-316.

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Cemeteries, § 9; 15 Tenn. Juris.,

Insurance, § 22; 17 Tenn. Juris., Licenses, § 14.

Law Reviews. Caskets “R” Us v. Tennessee Board of Funeral Directors: An open-and-shut case (Bill Haltom), 36 No. 10 Tenn. B.J. 37 (2000).

Torts — Crematorium as a Nuisance — Anticipatory Injunction — Psychic and Aesthetic Injury, 34 Tenn. L. Rev. 329.

Comparative Legislation. Funeral directors:

Ala. Code § 34-13-1 et seq.

Ark. Code § 17-29-201 et seq.

Ga. O.C.G.A. § 43-18-1 et seq.

Ky. Rev. Stat. Ann. § 316.010 et seq.

Miss. Code Ann. § 73-11-33 et seq.

Mo. Rev. Stat. § 333.011 et seq.

N.C. Gen. Stat. § 90-210.18 et seq.

Va. Code § 54.1-2800 et seq.

Cited: Garrett v. Forest Lawn Mem. Gardens, Inc., 588 S.W.2d 309 (Tenn. Ct. App. 1979).

NOTES TO DECISIONS

ANALYSIS

1. Crematories.
2. Constitutionality.

1. Crematories.

Funeral directing includes the operation of a crematory. *State ex rel. Cunningham v. Feezell*, 218 Tenn. 17, 400 S.W.2d 716 (1966).

2. Constitutionality.

The provisions of the Funeral Directors and Embalmers Act (FDEA) under T.C.A. § 62-5-101 that require an individual to become a licensed funeral director in order to lawfully sell a casket or an urn violate the Due Process and Equal Protection clauses of the U.S. Const. amend. 14. *Craigiles v. Giles*, 110 F. Supp. 2d 658 (E.D. Tenn. 2000), *aff'd*, 312 F.3d 220, 2002 Fed. App. 417P (6th Cir. 2002).

T.C.A. § 62-5-101(a)(3)(A)(ii) of the Tennessee Funeral Directors and Embalmers Act prohibiting sales of caskets by persons not licensed as funeral directors violated the due process

and equal protection clauses of the Fourteenth Amendment to the U.S. Constitution as applied to casket store operators; the statute did not bear a rational relationship to any legitimate purpose other than protecting the economic interests of licensed funeral directors. *Craigiles v. Giles*, 312 F.3d 220, 2002 Fed. App. 417 (6th Cir. 2002).

Summary judgment was inappropriate on plaintiffs' constitutional challenge to the Funeral Directors and Embalmers Act, T.C.A. § 62-5-101 et seq., because, although the state had a legitimate, governmental interest in consumer protection and in ensuring the safe and sanitary disposal of human remains, genuine issues of material fact existed as to whether those reasons were rationally related to the requirement that funeral merchandise be sold to the public only by a licensed funeral director operating from a licensed funeral establishment. *Craigiles v. Giles*, — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 22435 (E.D. Tenn. July 18, 2000).

Collateral References. 38 Am. Jur. 2d Funeral Directors and Embalmers § 1 et seq.

51 Am. Jur. 2d Licenses § 39 et seq.

53 C.J.S. Licenses § 30 et seq.

Recovery of money paid to unlicensed person required by law to have occupation or business license or permit to make contract. 74 A.L.R.3d 637.

Right to attack validity of statute, ordinance, or regulation relating to occupational or professional license as affected by applying for or securing license. 65 A.L.R.2d 660.

Validity and construction of statute, ordinance, or other regulation in relation to funeral directors and embalmers. 89 A.L.R.2d 1338.

Licenses ⇌ 1 et seq.

62-5-102. Persons exempt from chapter. — Nothing herein shall be constituted to prevent or interfere with the ceremonies, customs, religious rites, or religion of any people, denomination, or sect, or to prevent or interfere with any religious denomination, sect, any body composed of persons of a denomination, or to prevent or interfere with any church or synagogue from having its committee or committees prepare human bodies for burial or to the families, friends or neighbors of deceased persons who prepare and bury their dead without charge. [Acts 1951, ch. 13, § 16 (Williams, § 7140.16); T.C.A. (orig. ed.), § 62-526; Acts 1997, ch. 169, § 1.]

62-5-103. Penalty for violations. — (a) A violation of this chapter is a Class C misdemeanor.

(b) It is the duty of the district attorney general to prosecute violations of this chapter. [Acts 1951, ch. 13, § 21 (Williams, § 7140.21); T.C.A. (orig. ed.), § 62-527; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

Section to Section References. This section is referred to in § 62-5-107.

Cited: *Garrett v. Forest Lawn Mem. Gardens, Inc.*, 588 S.W.2d 309 (Tenn. Ct. App. 1979).

62-5-104. Description of funeral merchandise. — (a) All receptacles and containers used for burial, entombment, or other final disposition of a dead human body or the remains thereof shall bear in a conspicuous location on the outside, concise wording describing the material of which the receptacle or container is formed or manufactured: such as, but not limited to, 20 gauge steel, 32 oz. copper, solid oak, 12 gauge steel, reinforced concrete, pre-formed concrete, soft wood box, etc.

(b) Every person who violates any provision of this section commits a Class A misdemeanor, and upon conviction, shall be fined not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) per violation, or shall be imprisoned for not less than ten (10) days nor more than ninety (90) days per violation, or both.

(c) In addition to the other remedies, an action of injunction may be brought and maintained by the state of Tennessee, or any other interested party or parties, to enjoin the violation of this section. [Acts 1972, ch. 553, § 4; T.C.A., §§ 62-536 — 62-538; Acts 1989, ch. 591, §§ 1, 6.]

Code Commission Notes. The misdemeanor in this section had been designated as a Class A misdemeanor by authority of § 40-35-110, which provides that an offense designated a misdemeanor without specification as to category is a Class A misdemeanor. See also § 39-11-114.

Cross-References. Penalty for violation of chapter, § 62-5-103.

Rigid containers not mandatory for remains of certain children, § 68-4-112.

NOTES TO DECISIONS

1. Constitutionality.

The funeral merchandise sales licensure requirement is not a rational means of achieving legitimate state purposes; therefore, the provisions of T.C.A. § 62-5-101 that require an individual to become a licensed funeral director in

order to lawfully sell a casket or an urn violate the due process clause of U.S. Const. amend. 14. *Craigsmiles v. Giles*, 110 F. Supp. 2d 658 (E.D. Tenn. 2000), *aff'd*, 312 F.3d 220, 2002 Fed. App. 417P (6th Cir. 2002).

62-5-105. Hearings and judicial review. — The provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, shall govern all matters and procedures respecting the hearing and judicial review of any contested case, as defined therein, arising under this chapter. [Acts 1980, ch. 451, § 11; T.C.A., § 62-539.]

62-5-106. Advertisements. — Any advertisement by a funeral director or embalmer for the sale of merchandise or services which indicates a specific price shall include an itemized listing of each and every item, procedure, or service and shall show the price of such item. Failure to include the itemized price listing in any advertisement constitutes misrepresentation or fraud in the conduct of the business of the funeral establishment or false and misleading advertising as used in § 62-5-317. [Acts 1984, ch. 533, § 1.]

62-5-107. Utilization of licensed crematory facilities by funeral directors — Penalty for violation — Limited civil liability. — (a) A funeral director shall utilize the services only of licensed crematory facilities.

(b) If a funeral director utilizes the services of a crematory outside of Tennessee, the crematory must be a licensed facility of the state in which such crematory is located.

(c) Prior to utilizing a crematory, the funeral director shall:

(1) Determine that the crematory is currently licensed in Tennessee or, if an out-of-state crematory, the state in which it is located;

(2) Obtain and maintain a copy of such crematory's current license and further maintain a copy of the results of the latest regularly scheduled inspection of the crematory by the state in which the facility is located, if such state inspects crematories; and

(3) Deliver a written disclosure to the authorizing agent or agents. Such written disclosure shall, at a minimum:

(A) Include the name, telephone number, and address of the in-state or out-of-state crematory;

(B) Provide for the specific consent of the authorizing agent or agents for the use of such in-state or out-of-state crematory;

(C) Be signed and dated by the funeral director and the authorizing agent or agents; and

(D) Be retained by the Tennessee funeral director at a licensed Tennessee funeral establishment, with a copy provided to the authorizing agent or agents.

(d) Notwithstanding the provisions of § 62-5-103, a violation for each use of an unlicensed crematory pursuant to this section shall be punishable only as provided by § 62-5-317, § 56-1-308 and any rules promulgated thereunder.

(e)(1) The funeral director shall not be liable for damages in a civil action for any error, inaccuracy or omission of any information delivered pursuant to this section if:

(A) The error, inaccuracy or omission was based upon information provided by public agencies or by other individuals or entities providing information that is required to be disclosed pursuant to this section; and

(B) The funeral director was not grossly negligent in obtaining the information from a third party and transmitting such information as required under this section.

(2) It is an affirmative defense in any such civil action that the funeral director complied with the requirements of this section upon submitting to the court copies of the signed consent form and the license and inspection results of the in-state or out-of-state crematory used by the funeral director for the cremation of the dead human body or body parts which is the subject of the civil action. [Acts 2002, ch. 809, § 2.]

Effective Dates. Acts 2002, ch. 809, § 4 provides that the act take effect June 11, 2002 for the purpose of promulgating rules and regulations, and that for all other purposes, the act take effect July 1, 2002.

62-5-108. Display of license on crematory vehicles transporting remains. — (a) Any vehicle which transports a dead human body or body parts from a funeral establishment in this state to a crematory, other than a vehicle that is owned or operated by a funeral establishment and has the name of the funeral establishment on the outside of the vehicle, shall display a copy of the

crematory's current license in the vehicle in such a way as to be visible from the outside of such vehicle during the time such body or body parts are in the vehicle.

(b) This requirement is solely to provide notice to the funeral establishment that the dead human body or body parts are being released to the proper parties for the cremation of such body or body parts and no criminal penalty shall apply if the license is not so displayed. [Acts 2002, ch. 809, § 2.]

Effective Dates. Acts 2002, ch. 809, § 4 provided that the act take effect June 11, 2002 for the purpose of promulgating rules and regulations, and that for all other purposes, the act take effect July 1, 2002.

PART 2—BOARD OF FUNERAL DIRECTORS AND EMBALMERS

62-5-201. Creation — Appointment and terms of members. —

(a) There is created a state board to be known and designated as the board of funeral directors and embalmers for the state of Tennessee. Such board shall consist of seven (7) members who shall possess good moral character, shall be residents of the state and shall be appointed by the governor. At least six (6) of such members shall be licensed funeral directors who shall possess a minimum of five (5) consecutive years' experience in Tennessee immediately preceding their appointment; provided, that at least one (1) member shall be appointed from a list of at least three (3) names submitted by the Tennessee Funeral Directors Association and at least one (1) member shall be appointed from a list of at least three (3) names submitted by the Tennessee Funeral Directors and Morticians Association. One (1) of the seven (7) members serving on the board shall be a person who is not engaged in the business of a funeral director or embalmer or otherwise commercially associated with any funeral establishment. There shall be at least two (2) members but not more than three (3) members from each grand division. In making appointments to the board, the governor shall strive to ensure that at least one (1) person serving on the board is sixty (60) years of age or older and that at least one (1) person serving on the board is a member of a racial minority.

(b) On January 1 of each year, the governor shall appoint a person who shall serve as a member of the board for a period of four (4) years, or until a successor is appointed and qualified. It is the purpose of this section that at least one (1) member shall retire from the board at the end of each year, thereby creating a rotating board.

(c) A member of the board shall not be eligible for at least one (1) term for reappointment to membership on the board.

(d) Vacancies occurring on the board shall be filled in accordance with the provisions of this section for the balance of the unexpired term. [Acts 1951, ch. 13, § 3 (Williams, § 7140.3); Acts 1959, ch. 314, § 1; 1980, ch. 554, § 3; T.C.A. (orig. ed.), § 62-502; Acts 1988, ch. 1013, § 29; 1991, ch. 284, § 1.]

Compiler's Notes. The regulatory board created by this section is attached to the division of regulatory boards in the department of commerce and insurance for purposes of administration, see §§ 4-3-1304, 56-1-301 — 56-1-306.

The board of funeral directors and embalmers, created by this section, terminates June 30, 2005. See §§ 4-29-112, 4-29-226.

Cross-References. Grand divisions, title 4, ch. 1, part 2.

State examining boards, general provisions, title 4, ch. 19.

Section to Section References. This section is referred to in § 4-29-226.

Cited: *Craigsmiles v. Giles*, 110 F. Supp. 2d 658 (E.D. Tenn. 2000), *aff'd*, 312 F.3d 220, 2002 Fed. App. 417P (6th Cir. 2002); *Craigsmiles v. Giles*, — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 22435 (E.D. Tenn. July 18, 2000).

62-5-202. Oath of members. — Members of the board, before entering upon their duties, shall take and subscribe to the oath of office provided for state officers. [Acts 1951, ch. 13, § 4 (Williams, § 7140.4); T.C.A. (orig. ed.), § 62-503.]

62-5-203. President — Rules and regulations. — The board has the power to select from its members a president, and to adopt, promulgate and enforce such rules and regulations for the transaction of its business and the management of its affairs, the standards of service and practice to be followed in the profession of funeral directing, and the betterment and promotion of the educational standards of the profession of funeral directors and embalmers, in this state, as it may deem expedient, consistent with the laws of the state of Tennessee. [Acts 1951, ch. 13, § 4 (Williams, § 7140.4); Acts 1967, ch. 372, § 1; 1973, ch. 37, § 1; 1976, ch. 806, § 1(103); 1978, ch. 906, § 16; 1980, ch. 554, § 4; T.C.A. (orig. ed.), § 62-504.]

Cited: *Craigsmiles v. Giles*, — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 22435 (E.D. Tenn. July 18, 2000).

62-5-204. [Repealed.]

Compiler's Notes. Former § 62-5-204 (Acts 1951, ch. 13, § 4 (Williams, § 7140.4); 1967, ch. 372, § 1; 1973, ch. 37, § 1; 1976, ch. 806, § 1(103); 1978, ch. 906, § 16; 1980, ch. 554, § 4; T.C.A. (orig. ed.), § 62-504), concerning compensation of members, was repealed by Acts 1984, ch. 676, § 14. For present provisions, see § 56-1-307.

62-5-205. Executive director. — The director of the division of regulatory boards, or the director's designee, shall serve as executive director for the board and shall provide all administrative functions for the board. [Acts 1951, ch. 13, § 4 (Williams, § 7140.4); Acts 1967, ch. 372, § 2; 1975, ch. 236, § 1; 1978, ch. 906, § 17; 1978, ch. 924, § 4; T.C.A. (orig. ed.), § 62-505; Acts 1996, ch. 742, § 1.]

62-5-206. Examination to become funeral director — Issuance of license. — (a) The board may hold such meetings as it may deem necessary, provided all members have been notified in writing of same, and may transact any business at any such meeting.

(b) Four (4) or more members shall comprise a quorum authorizing the board to transact the business prescribed under this chapter. [Acts 1951, ch. 13, § 5 (Williams, § 7140.5); Acts 1975, ch. 165, § 9; 1976, ch. 806, § 1(103); 1978, ch. 906, § 18; 1980, ch. 554, § 5; T.C.A. (orig. ed.), § 62-506; Acts 1999, ch. 20, § 1.]

62-5-207. Revenues and expenses. — (a) All fees, penalties and other moneys derived from the operation of this chapter shall be paid to the board, and shall be used by it for the purpose of defraying the necessary expenses of the board in the administration of this chapter.

(b) All such moneys received by the board over and above the expenses of the board shall be paid into the state treasury. [Acts 1951, ch. 13, § 22 (Williams, § 7140.22); T.C.A. (orig. ed.), § 62-507.]

PART 3—LICENSING

62-5-301. Publication of examination rules. — (a) The board of funeral directors and embalmers shall publish its rules and regulations covering subjects to be included in all examinations, the method of conducting such examinations, and other matters pertaining thereto.

(b) [Deleted by 2001 amendment.]
[Acts 1951, ch. 13, § 7 (Williams, § 7140.7); T.C.A. (orig. ed.), § 62-508; Acts 2001, ch. 188, § 1.]

Amendments. The 2001 amendment deleted (b) which read: “Changes in the rules and regulations shall be published at least ninety (90) days before becoming effective.”

Effective Dates. Acts 2001, ch. 188, § 18. July 1, 2001.

Cited: *Craigmiles v. Giles*, — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 22435 (E.D. Tenn. July 18, 2000).

62-5-302. Preservation of examination papers. — All manuscripts submitted in answer to questions on any examination provided in this chapter shall be kept on file for at least sixty (60) days after the results are announced by the board, shall be made available to the applicant for examination in the presence of a member of the board or representatives of the examination testing service, and shall be made available in case the applicant desires to contest same. [Acts 1951, ch. 13, § 6 (Williams, § 7140.6); T.C.A. (orig. ed.), § 62-509; Acts 2001, ch. 188, § 2.]

Amendments. The 2001 amendment inserted “or representatives of the examination testing service”.

Effective Dates. Acts 2001, ch. 188, § 18. July 1, 2001.

62-5-303. Licensing requirement. — (a)(1) In order to safeguard life and health and to prevent the spread of contagious diseases, and to improve sanitary conditions and public health generally, it is required that only properly qualified persons shall engage in funeral directing, embalming and operating of a funeral establishment.

(2) Any person engaged therein in this state shall be licensed by the board herein created prior to engaging therein.

(b) It is unlawful for any person to engage in, or offer to engage in, either funeral directing, embalming or operation of a funeral establishment unless such person or business has been duly licensed under the provisions of this chapter as hereinafter provided. [Acts 1951, ch. 13, § 1 (Williams, § 7140.1); Acts 1968, ch. 542, § 2; T.C.A. (orig. ed.), § 62-510.]

Compiler's Notes. The offense in this section may be affected by the Criminal Sentencing Reform Act of 1989. See §§ 39-11-114, 40-35-110, 40-35-111.

Cited: State ex rel. Cunningham v. Feezell, 218 Tenn. 17, 400 S.W.2d 716 (1966); Craigmiles v. Giles, — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 22435 (E.D. Tenn. July 18, 2000).

NOTES TO DECISIONS

1. **Constitutionality.**

The funeral merchandise sales licensure requirement is not a rational means of achieving legitimate state purposes; therefore, to the extent that T.C.A. § 62-5-303 requires an individual to become a licensed funeral director in

order to lawfully sell a casket or an urn, it violates the due process clause of U.S. Const. amend 14. Craigmiles v. Giles, 110 F. Supp. 2d 658 (E.D. Tenn. 2000), aff'd, 312 F.3d 220, 2002 Fed. App. 417P (6th Cir. 2002).

62-5-304. Application for funeral establishment license. — (a) Every person, partnership, firm, association or corporation desiring to commence the operation of a funeral establishment after December 31, 1968, shall make application to the board accompanying same with payment of a fee as set by the board.

(b) All applications must be verified under oath and show the:

(1) Name of establishment;

(2) Location; if more than one (1) location, each separate location must be listed;

(3) Number of employees; and

(4) Names and addresses of all licensed funeral directors and/or embalmers with designation as to whether they are part-time or full-time employees. [Acts 1968, ch. 542, § 3; T.C.A., § 62-511; Acts 1989, ch. 523, § 149.]

Cross-References. Fee for applicants in business on December 31, 1968, § 62-5-310.

62-5-305. Application for funeral director's license — Apprenticeship. — (a) Every person, not heretofore licensed or registered in this state as a funeral director, desiring to engage in the practice or business of funeral directing, shall make application to the board, accompanying the same with a fee as set by the board. The application must be verified under oath, containing the name of the applicant, showing the applicant to be:

(1) More than eighteen (18) years of age;

(2) A citizen of the United States;

(3) Of good moral character;

(4) Properly protected against communicable diseases;

(5) A high school graduate evidenced by a certificate or diploma, or having the equivalent of a high school education, to the satisfaction of the board; and

(6)(A) That the applicant either has satisfactorily completed a course of study in a mortuary school approved by the board, and has had one (1) year of practical training and experience of a character satisfactory to the board, in regular, bona fide, full-time employment under the personal supervision and instruction of a licensed funeral director in this state; or

(B) In lieu of study in such mortuary school, that the applicant has had such practical training and experience of not less than two (2) years and that, during such period, the applicant has assisted in at least twenty-five (25) funerals.

(b) The applicant, upon entering a mortuary school or the employ of a funeral director, whichever occurs first, with the intent of obtaining a license, shall register with the board, upon a form to be provided by the board and shall pay to the board a registration fee in an amount to be established by the board. Any applicant who enters the employ of a funeral director shall report on a quarterly basis to the board such information as the board may require.

(c) The registrations shall be valid for a period of two (2) years from the date of registration and the registrant shall indicate on the registration form whether such registrant intends to qualify under the provisions of subdivision (a)(6)(A) or (B) of this section. [Acts 1951, ch. 13, § 8 (Williams, § 7140.8); Acts 1971, ch. 161, § 2; 1973, ch. 35, § 1; 1980, ch. 554, § 6; T.C.A. (orig. ed.), § 62-512; Acts 1985, ch. 354, § 7; 1989, ch. 523, § 150; 2001, ch. 188, §§ 5-8.]

Amendments. The 2001 amendment, in (a), substituted “mortuary school” for “school for funeral directors” in (6)(A) and for “funeral directors’ school” in (6)(B); in the first sentence of (b), substituted “mortuary school” for “funeral directors’ school”, inserted “whichever occurs first”, deleted “as a student or apprentice” following “shall register” and made other minor stylistic changes; and rewrote (c) which read: “The registration as a student or apprentice is valid for a period of one (1) year from the date of registration.”

Effective Dates. Acts 2001, ch. 188, § 18. July 1, 2001.

Attorney General Opinions. The practical training and experience required of applicants for a funeral director’s license may occur outside the state, provided that such apprenticeship occurs under the personal supervision and instruction of a funeral director licensed in Tennessee, OAG 03-003 (1/13/03).

NOTES TO DECISIONS

1. Constitutionality.

To the extent that provisions of the Funeral Directors and Embalmers Act (FDEA), T.C.A. § 62-5-101 et seq., require an individual to become a licensed funeral director in order to

lawfully sell a casket or an urn, the provisions violate the U.S. Const. amend. 14. *Craigsmiles v. Giles*, 110 F. Supp. 2d 658 (E.D. Tenn. 2000), aff’d, 312 F.3d 220, 2002 Fed. App. 417P (6th Cir. 2002).

62-5-306. Examination for funeral directors — Issuance of license. —

(a) In addition to the foregoing qualifications, every person desiring to enter into the practice of funeral directing, except as herein provided, shall pass an examination to determine the applicant’s knowledge and fitness therefor, as required by this chapter.

(b) The board shall determine the subjects of examination, and their scope, content and character, which in any examination shall be the same for all applicants. Examinations shall be held not less than twice each year, and the board shall give thirty (30) days’ notice in advance of the time and place of the examinations.

(c) If the board shall find upon examination that the applicant has a reasonable knowledge of sanitation and disinfection of premises, clothing, bedding, and other articles subject to contagion and infection, and has a reasonable knowledge of the sanitation and disinfection of bodies of diseased persons where death was caused by infectious diseases or communicable diseases, and has all the requirements and qualifications herein stated, and has complied with all the rules and regulations of the board applying to funeral directors, the board shall, upon receipt of a fee as set by the board, issue to the applicant a license to practice funeral directing.

(d) The current license of each funeral director shall be available for inspection in the office of the funeral establishment in which such funeral director works. If a funeral director works in more than one (1) establishment, the funeral director shall obtain from the board, for a fee established by the board, the number of duplicate licenses necessary to have a license available for inspection at each establishment at which the funeral director works. [Acts 1951, ch. 13, § 9 (Williams, § 7140.9); T.C.A. (orig. ed.), § 62-513; Acts 1985, ch. 354, § 8; 1989, ch. 523, § 151; 1991, ch. 523, § 1; 2001, ch. 188, §§ 3, 9, 15.]

Amendments. The 2001 amendment inserted “not less than” in the second sentence of (b); deleted the last sentence of (c) which read: “The license shall be signed by all members of

the board and attested by its seal.”; and added (d).

Effective Dates. Acts 2001, ch. 188, § 18. July 1, 2001.

NOTES TO DECISIONS

1. Constitutionality.

There is no reason to require someone who sells what is essentially a box to undergo the time and expense of training and testing that has nothing to do with the state’s asserted goals of consumer protection and health and safety; therefore, to the extent that provisions of the Funeral Directors and Embalmers Act (FDEA),

T.C.A. § 62-5-101 et seq., require an individual to become a licensed funeral director in order to lawfully sell a casket or an urn, the provisions violate the equal protection clause of U.S. Const. amend. 14. *Craigsmiles v. Giles*, 110 F. Supp. 2d 658 (E.D. Tenn. 2000), *aff’d*, 312 F.3d 220, 2002 Fed. App. 417P (6th Cir. 2002).

62-5-307. Application for embalmer’s license — Apprenticeship. —

(a) No person, unless licensed or registered in this state as an embalmer prior to February 8, 1951, shall be granted a license to engage in the practice of embalming dead human bodies within this state unless the person makes application to the board for such license, accompanying the same with a fee as set by the board.

(b) The application shall show that the applicant:

- (1) Has attained the age of eighteen (18) years;
- (2) Is a citizen of the United States;
- (3) Is of good moral character; and
- (4)(A) Has satisfactorily completed a four-year course of study in a high school, the same to be evidenced by a certificate or diploma; or
- (B) Has the equivalent of a high school education, which is satisfactory to the board.

(c) Such applicant shall, before making application for license, have completed a course of study of not less than twelve (12) months in the science and art of embalming, disinfection and sanitation, in a mortuary school recognized by the board, and shall have served an apprenticeship of one (1) year under a licensed embalmer and funeral director having an established place of business.

(d) When beginning either the required apprenticeship or the required course of study, whichever occurs first, the person shall file an application for a certificate of registration with the board and shall pay a fee in the amount to be established by the board. Such registration shall be valid for a period of two (2) years from the date of registration. During the apprenticeship period, the person shall assist in at least twenty-five (25) embalmings and shall report on a quarterly basis to the board such information as the board may require. The

application for a certificate of registration shall be verified under oath, giving the name of the person or persons under whom the applicant will work, the date of beginning such work, and stating that the applicant will do actual work as a paid assistant in the preparation and care of dead human bodies. [Acts 1951, ch. 13, § 11 (Williams, § 7140.11); Acts 1973, ch. 36, § 1; 1973, ch. 39, § 1; 1980, ch. 554, § 7; T.C.A. (orig. ed.), § 62-514; Acts 1985, ch. 354, § 9; 1989, ch. 523, § 152; 2001, ch. 188, §§ 10, 11.]

Amendments. The 2001 amendment substituted “in a mortuary school” for “in a regular school of embalming” in (c); and, in (d), rewrote the first sentence which read: “When beginning the required apprenticeship, the person shall file a certificate of registration with the board and shall pay a fee in an amount to be established by the board.”, substituted “two (2) years” for “one (1) year” in the second sentence, substituted “the apprenticeship period,” for

“such period” in the third sentence, and in the fourth sentence inserted “application for a”, substituted “registration shall” for “registration must”, and inserted “and stating”.

Effective Dates. Acts 2001, ch. 188, § 18. July 1, 2001.

Law Reviews. Tennessee Civil Disabilities: A Systemic Approach (Neil P. Cohen), 41 Tenn. L. Rev. 253.

62-5-308. Embalmers’ examination — Issuance of license. — (a) In addition to the foregoing qualifications, every person desiring to enter into the practice of embalming, except as herein provided, shall pass an examination to determine the person’s knowledge and fitness therefor, as required by this chapter.

(b) The board shall determine the subjects of examination, and their scope, content and character, which in any examination shall be the same for all applicants. Examination shall be held not less than twice each year, and the board shall give thirty (30) days’ notice in advance of the time and place of the examinations.

(c) Upon such examination, if the board finds that the applicant meets the requirements of age, citizenship, moral character, education, experience, and having successfully passed the examination, the board shall, upon receipt of a fee as set by the board, issue a license to an applicant to engage in the practice of embalming.

(d) The current license of each embalmer shall be available for inspection in the office of the funeral establishment in which such embalmer works. If an embalmer works in more than one (1) establishment, the embalmer shall obtain from the board, for a fee established by the board, the number of duplicate licenses necessary to have a license available for inspection at each establishment at which the embalmer works. [Acts 1951, ch. 13, § 12 (Williams, § 7140.12); T.C.A. (orig. ed.), § 62-515; Acts 1985, ch. 354, § 10; 1989, ch. 523, § 153; 2001, ch. 188, §§ 4, 12, 16.]

Amendments. The 2001 amendment inserted “not less than” in the second sentence of (b); deleted “, signed by all members of the board and authenticated by its seal” at the end of (c); and added (d).

Effective Dates. Acts 2001, ch. 188, § 18. July 1, 2001.

62-5-309. Practice by unregistered persons prohibited. — (a) It is unlawful for any person not a registered funeral director or embalmer, as provided herein, to engage in funeral directing or embalming.

(b) It is unlawful for any person, partnership, firm, association or corporation not licensed as herein provided, to engage in the operation of a funeral establishment. [Acts 1951, ch. 13, § 13 (Williams, § 7140.13); Acts 1968, ch. 542, § 3; T.C.A. (orig. ed.), § 62-516.]

Compiler's Notes. The offenses in this section may be affected by the Criminal Sentencing Reform Act of 1989. See §§ 39-11-114, 40-35-110, 40-35-111.

Law Reviews. Tennessee Civil Disabilities: A Systemic Approach (Neil P. Cohen), 41 Tenn. L. Rev. 253.

NOTES TO DECISIONS

1. Operation Without License.

Operation of a crematory could be included within the definition of funeral directing as set out in § 62-5-101, but the provisions of this section prohibiting such operation without a

license only has application where such operation has begun and cannot serve as a basis for enjoining such an operation before it commences. State ex rel. Cunningham v. Feezell, 218 Tenn. 17, 400 S.W.2d 716 (1966).

62-5-310. Licenses to persons practicing before 1951 and establishments operating before 1969. — (a)(1) Any person who on February 8, 1951, held a license granted by any authority of the state of Tennessee to carry on the profession of embalming, or any person who was on such date a regular and bona fide funeral director in Tennessee, shall not be required to submit to an examination, but shall be entitled to receive a license upon the same terms and conditions as are herein provided for the renewal of licenses of those who may be licensed under this chapter; provided, that the application is made prior to January 1, 1973. The license shall be issued by the board upon the payment of a fee of five dollars (\$5.00) per license.

(2) All such applicants shall be subject to every other provision of this chapter and such rules and regulations as the board may adopt in pursuance of this chapter.

(3) Any person on February 8, 1951, who was employed as an embalmer by a funeral director in this state, shall be entitled to take the examination prescribed in this chapter upon application to the board, prior to July 1, 1972, notwithstanding any other requirement.

(b) Any person, partnership, firm, association or corporation actively engaged in the operation of a funeral establishment on or before December 31, 1968, shall be granted a license for the operation of a funeral home establishment upon application accompanied by payment of a fifteen dollar (\$15.00) fee; provided, that such applicant has complied with every other provision of this chapter and such rules and regulations as the board may adopt in pursuance of this chapter.

(c) Any person who on January 1, 1960, held a license granted by authority of the state of Tennessee to engage in the profession of embalming, and who is no longer so licensed for the sole reason that such person voluntarily chose not to pay the license renewal fee, shall not be required to submit to an examination but shall be entitled to receive a license upon the same terms and conditions as are herein provided for the renewal of licenses of those who are licensed under this chapter; provided, that such person pays all license renewal fees that would have been required from the date such license was allowed to lapse until the date application for renewal pursuant to this

subsection is made. [Acts 1951, ch. 13, § 18 (Williams, § 7140.18); Acts 1959, ch. 198, § 1; 1968, ch. 542, § 3; 1972, ch. 553, § 2; 1972, ch. 847, § 1; T.C.A. (orig. ed.), § 62-517; Acts 1992, ch. 699, § 1.]

62-5-311. Reciprocity. — (a) A nonresident of this state who holds a valid license as a funeral director or embalmer issued by another state or provincial authority may apply for a license as a funeral director or embalmer in this state by submitting written application to the board on the prescribed form, accompanied by:

(1) A fee as set by the board per license applied for; and

(2) A certificate showing that the applicant was duly examined by such other state or provincial authority at a time when the applicant was not a resident of this state.

(b) If the board determines that the nonresident applicant meets or exceeds each of the minimum qualifications required for funeral directors or embalmers in this state, the board may limit examination of such applicant to questions relating to the laws and rules governing the practice in which the applicant wishes to engage. If the applicant receives a scaled score of seventy-five (75) or better on such examination, the board may, upon receipt of a fee as set by the board, issue to such applicant the appropriate license.

(c) [Deleted by 1999 amendment.] [Acts 1951, ch. 13, § 20 (Williams, § 7140.20); Acts 1980, ch. 554, §§ 5, 8; T.C.A. (orig. ed.), §§ 62-506, 62-518; Acts 1985, ch. 354, § 11; 1989, ch. 523, §§ 154, 155; 1999, ch. 20, § 2; 2001, ch. 188, § 13.]

Amendments. The 2001 amendment substituted “scaled score of seventy-five (75)” for “grade of seventy-five percent (75%)” in (b).

Effective Dates. Acts 2001, ch. 188, § 18. July 1, 2001.

62-5-312. [Obsolete.]

62-5-313. Requirements for operation. — (a) Every person, firm, partnership, or corporation, at each and every place of business conducted by such person, firm, partnership, or corporation, in the business or practice of funeral directing, shall have a fixed place of business or establishment devoted to the care and preparation of dead human bodies, and shall have a licensed funeral director in charge of each such place of business, and no employee or member of such firm or corporation shall engage in the care, preparation, disposal or burial of dead human bodies and the management of funerals, nor discharge the duties of a funeral director, unless the employee or member is a licensed funeral director in accordance with the provisions of this chapter. Nothing in this chapter shall be interpreted to prohibit the use of unlicensed assistants when they are under the direction and supervision of a licensed funeral director.

(b)(1) A license to operate a funeral establishment shall not be issued by the board unless the applicant has at least one (1) full-time person duly licensed for the practice of funeral directing, and a duly licensed embalmer in attendance during the preparation of the dead remains.

(2) Each funeral establishment must have available for its use a preparation room equipped with tile, cement or composition floor, necessary drainage and ventilation and necessary instruments and supplies for the preparation of embalming dead human bodies for burial, transportation or other disposition.

(c) Every funeral establishment licensed under this chapter must be managed and supervised by a licensed funeral director, responsible for each funeral establishment.

(d)(1) Prior to or at the time of placing a dead human body in a casket for interment or entombment, each funeral establishment shall securely affix or attach to the body, preferably upon the ankle, a permanent identification device approved by the board, containing the decedent's name, date of birth, date of death, and social security number. If such information is not available to the funeral establishment, then a permanent identification device stating such information is not available shall be affixed or attached to the body.

(2) If a dead human body is to be cremated, then a permanent identification device approved by the board, containing the decedent's name, date of birth, date of death, and social security number shall be placed in the crematory urn before the remains are placed in such urn. If such information is not available to the funeral establishment, then a permanent identification device stating such information is not available shall be placed in the crematory urn before the remains are placed in such urn.

(3) No funeral establishment shall solicit or collect a fee for the affixing or attaching of a permanent identification device pursuant to this section.

(4) Failure to comply with this subsection (d) is a disciplinary offense and is punishable as provided in § 62-5-317.

(e) Each funeral establishment must have its current license available for inspection in the office of the funeral establishment. [Acts 1951, ch. 13, § 10 (Williams, § 7140.10); modified; Acts 1968, ch. 542, § 3; 1975, ch. 346, § 1; T.C.A. (orig. ed.), § 62-520; Acts 1995, ch. 21, § 1; 2001, ch. 188, § 17.]

Amendments. The 2001 amendment added (e).

Effective Dates. Acts 2001, ch. 188, § 18. July 1, 2001.

NOTES TO DECISIONS

1. Constitutionality.

The funeral merchandise sales licensure requirement is not a rational means of achieving legitimate state purposes; therefore, to the extent that T.C.A. § 62-5-313 requires an individual to become a licensed funeral director in

order to lawfully sell a casket or an urn, it violates the Due Process and Equal Protection Clauses of the U.S. Const. amend. 14. *Craigiles v. Giles*, 110 F. Supp. 2d 658 (E.D. Tenn. 2000), *aff'd*, 312 F.3d 220, 2002 Fed. App. 417P (6th Cir. 2002).

62-5-314. Use of names of unregistered persons restricted. — The name of any living person who has not been licensed, as herein provided, shall not be shown or displayed upon any funeral establishment, or used alone, in, as part of, or in connection, association, combination or together with the name or title of any person, firm, corporation or other form of enterprise engaged in undertaking or embalming, or on any card, sign, stationery or other printed or written instrument or device, or in any announcement or advertisement, or in any manner so as to give or tend to give the impression that such person is

licensed or entitled to practice either as a funeral director or embalmer. [Acts 1951, ch. 13, § 18 (Williams, § 7140.18); T.C.A. (orig. ed.), § 62-521.]

Attorney General Opinions. Use of names of unlicensed persons in connection with funeral business, OAG 95-066 (6/19/95).

62-5-315. Term of licenses — Not transferable — Duplicates — Renewals. — (a) All licenses issued to funeral directors or embalmers, as provided herein, shall be issued for a period of two (2) years, and shall be renewed biennially, at a fee in an amount to be established by the board, subject to the provisions of this chapter.

(b) All licenses issued to funeral establishments, as provided herein, shall be issued for a period of two (2) years and shall be renewed biennially at a fee in an amount to be established by the board, subject to the provisions of this chapter.

(c) No license issued to a funeral director, embalmer or funeral establishment granted hereunder shall be transferable or assignable.

(d) A duplicate license to replace any license lost, destroyed or mutilated may be obtained from the board upon submission of a proper letter of request, accompanied by payment of a fee as set by the board. [Acts 1951, ch. 13, § 14 (Williams, § 7140.14); Acts 1959, ch. 198, § 2; 1968, ch. 542, § 4; 1972, ch. 553, § 3; 1980, ch. 554, § 9; T.C.A. (orig. ed.), § 62-522; Acts 1985, ch. 354, § 12; 1989, ch. 360, § 6; 1989, ch. 523, § 156; 1990, ch. 1026, § 39.]

Cross-References. Director of division of ing certain license renewal dates, § 56-1-302. regulatory boards to promulgate rules concern-

62-5-316. Invalidity of unexpired license — Renewal, reinstatement or reapplication. — (a) Any license which is not renewed by its expiration date becomes invalid. The holder of such invalid license shall not practice the profession for which the license was issued, nor shall an establishment be operated if such establishment's license has become invalid, until such time as the license has been renewed or reinstated or a new license has been issued.

(b) When any license issued by the board becomes invalid because of nonrenewal, the executive director shall send a written notice to the license holder at the license holder's last known address, informing the license holder that such license holder cannot practice that profession or operate that establishment until the invalid license is renewed or reinstated or a new license is issued. The notice shall also state that the license may be renewed or reinstated at any time within sixty (60) days of the license expiration date by payment of the renewal fee and of a penalty fee in an amount to be established by the board. Any license not renewed or reinstated within sixty (60) days of the license expiration date shall not be subject to renewal or reinstatement and the license holder shall reapply as for an initial license; provided, that any examination shall be limited to the provisions of title 56, chapter 34 and this chapter and any rules promulgated thereunder if the reapplication is received by the board not more than one (1) year after the license expiration date. [Acts 1951, ch. 13, § 17 (Williams, § 7140.17); Acts 1980, ch. 554, § 10; T.C.A. (orig. ed.), § 62-523; 2001, ch. 188, § 14.]

Amendments. The 2001 amendment rewrote the section which read: "(a) Any license which is not renewed within ninety (90) days of the expiration date of such license shall be suspended.

"(b) Upon the suspension of such license, the secretary of the board shall send a registered letter to the license holder at his last known address, informing the license holder that the

license holder's license may be reinstated at any time within ninety (90) days by payment of the annual renewal fee and of a penalty fee in an amount to be established by the board."

Effective Dates. Acts 2001, ch. 188, § 18. July 1, 2001.

Cross-References. Certified mail instead of registered mail, § 1-3-111.

62-5-317. Grounds for denial, suspension, or revocation of license. —

(a) The board may refuse to grant, or may suspend, revoke or refuse to renew, any license granted to any person under the provisions of this chapter if:

(1) The applicant therefor or holder thereof obtained the license by fraud or misrepresentation either in the application for the license or in passing the examination therefor;

(2) The applicant therefor or holder thereof has been convicted of a felony or crime involving moral turpitude;

(3) The applicant therefor or holder thereof has been guilty of willfully violating any section of this chapter or any rule or regulation of the state, or local board of health governing the disposition of dead human bodies;

(4) The applicant therefor or holder thereof has been guilty of immoral or unprofessional conduct;

(5) The applicant therefor or holder thereof knowingly permits an unlicensed person to engage in the profession or business of funeral directing or embalming under the applicant's or holder's supervision;

(6) The applicant therefor or holder thereof has been guilty of habitual drunkenness or is addicted to the use of morphine, cocaine or other habit-forming drugs;

(7) The applicant therefor or holder thereof has been guilty of refusing to promptly surrender the custody of a dead human body upon the expressed order of the person legally entitled to such body;

(8) The applicant has received payment directly or indirectly, or has caused to be paid directly or indirectly any sum of money or other valuable consideration for the securing of business or for obtaining authority to dispose of dead human bodies; or

(9) The applicant or holder performs services after December 31, 1968, in a professional capacity as a funeral director and/or embalmer for any unlicensed funeral establishment operating in violation of this chapter.

(b) In addition, the board may refuse to grant, or may suspend, revoke or refuse to renew, any license granted for the operation of a funeral establishment or to any funeral director or embalmer under the provisions of this chapter for:

(1) Misrepresentation or fraud in the conduct of the business of the funeral establishment;

(2) False or misleading advertising;

(3) Solicitation of dead human bodies by the licensee, the licensee's agents, assistants or employees, whether such solicitation occurs after death or when death is imminent; provided, that this shall not be deemed to prohibit general advertising. Nothing in this subdivision shall, however, prohibit, prevent or in any way restrict the sale of burial protection or burial insurance;

(4) Employment directly or indirectly of any apprentice, agent, assistant, employee, or other person, on a part-time or full-time basis or on commission, for the purpose of calling upon individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral establishment;

(5) The direct or indirect payment or offer of payment of a fee by the licensee or the licensee's agents, assistants or employees for the purpose of securing general establishment business;

(6) Aiding or abetting an unlicensed person to practice within the funeral profession;

(7) Solicitation or acceptance by the licensee of a rebate in consideration for recommending or causing a dead human body to be disposed of in any crematory, mausoleum, or cemetery;

(8) Using any casket or part of a casket which has previously been used as a receptacle for, or in connection with, the burial or other disposition of a dead human body, except the shipping of another dead human body, or where disposition of the dead human body is to be by cremation, it shall be permissible to utilize a previously used casket shell for viewing the remains if, and only if, a new interior or interior insert is installed prior to each usage of such casket shell;

(9) Any willful violation of any state law or municipal or county ordinance or regulation affecting the handling or custody, care or transportation of dead human bodies;

(10) Fraud or misrepresentation in renewing a license to operate a funeral establishment;

(11) Unreasonably refusing to promptly surrender the custody of a dead human body upon the express order of the person lawfully entitled to the custody thereof;

(12) Knowingly making any false statement on the certificate of death;

(13) A violation of any statutes pertaining to the prearrangement and/or prefinancing of a funeral in this state;

(14) Supplying another person with false or misleading information concerning any provisions of law which require embalment of deceased persons;

(15) Solicitation or acceptance by the licensee of a fee for the affixing or attaching of a permanent identification device to a dead human body which is placed in a casket to be interred or entombed;

(16) Solicitation or acceptance by the licensee of a fee for the placing of a permanent identification device in a crematory urn before placing human remains in such urn; or

(17) Failure to comply with any of the provisions of this chapter or any rule or regulation promulgated or adopted by the board. [Acts 1951, ch. 13, § 15 (Williams, § 7140.15); Acts 1968, ch. 542, § 5; 1975, ch. 346, § 2; 1980, ch. 554, § 11; 1981, ch. 108, § 1; T.C.A. (orig. ed.), § 62-524; Acts 1995, ch. 21, § 2; 1996, ch. 810, § 1; 2002, ch. 809, § 3.]

Amendments. The 2002 amendment added (b)(17).

Effective Dates. Acts 2002, ch. 809, § 4 provided that the act take effect June 11, 2002 for the purpose of promulgating rules and reg-

ulations, and that for all other purposes, the act take effect July 1, 2002.

Cross-References. Disposition of dead bodies, title 68, ch. 4.

Section to Section References. This sec-

tion is referred to in §§ 62-5-106, 62-5-107, 62-5-313.

A Systemic Approach (Neil P. Cohen), 41 Tenn. L. Rev. 253.

Law Reviews. Tennessee Civil Disabilities:

NOTES TO DECISIONS

ANALYSIS

1. Immoral or unprofessional conduct.
2. Constitutionality.

1. Immoral or Unprofessional Conduct.

Where a funeral director, without the knowledge of the family of deceased, cashed an insurance policy which had been assigned to him and failed to account for the proceeds for five years, this amounted to immoral and unprofessional conduct, if knowing and intentional amounted to fraud, and was sufficient grounds for the revocation of his license. *Anderson v. Carter*, 512 S.W.2d 297 (Tenn. 1974).

2. Constitutionality.

The funeral merchandise sales licensure requirement is not a rational means of achieving legitimate state purposes; therefore, to the extent that provisions of the Funeral Directors and Embalmers Act (FDEA), T.C.A. § 62-5-101 et seq., require an individual to become a licensed funeral director in order to lawfully sell a casket or an urn, they violate the due process clause of U.S. Const. amend. 14. *Craigmiles v. Giles*, 110 F. Supp. 2d 658 (E.D. Tenn. 2000), aff'd, 312 F.3d 220, 2002 Fed. App. 417P (6th Cir. 2002).

PART 4—CONTRACTS FOR FUTURE SERVICES

62-5-401. Validity. — Any agreement, contract or plan requiring the payment of money in advance, whether in a lump sum or installments, which is made or entered into with any person, association, partnership, firm or corporation for the final disposition of a dead human body, or for funeral or burial services, or for the furnishing of personal property or funeral or burial merchandise, wherein the use of the personal property or the funeral or burial merchandise or the furnishing of professional services by a funeral director or embalmer is not immediately required, is hereby declared to be against public policy and void, unless all money paid thereunder shall be paid to and held by a bank or trust company which is authorized to do business in this state, or a federally insured savings and loan association or federally insured savings bank, and subject to the terms of an agreement for the benefit of the purchaser of the agreement, contract or plan. For the purpose of this part, “personal property” does not include cemetery lots or permanent grave markers. [Acts 1963, ch. 316, § 1; 1981, ch. 121, § 2; T.C.A., § 62-528; Acts 1985, ch. 230, § 9; 1985, ch. 231, § 1.]

Textbooks. Tennessee Jurisprudence, 5 Tenn. Juris., Cemeteries, § 9.

Law Reviews. Preneed Funeral Contracts

in Tennessee, 11 Mem. St. U.L. Rev. 231.

Attorney General Opinions. Contracts for the sale of burial vaults, OAG 96-017 (2/15/96).

NOTES TO DECISIONS

ANALYSIS

1. In general.
2. Construction with burial insurance law.

1. In General.

Contracts coming within the statute were against public policy and void. *Whaley v. Holly*

Hills Mem. Park, 490 S.W.2d 532 (Tenn. Ct. App. 1972).

2. Construction with Burial Insurance Law.

This part and §§ 56-34-105 — 56-34-108, concerning burial insurance, are to be read in pari materia. *Garrett v. Forest Lawn Mem.*

Gardens, Inc., 588 S.W.2d 309 (Tenn. Ct. App. 1979).

Collateral References. What are necessary payment and funeral expense provision of insurance policy. 87 A.L.R.3d 497.

62-5-402. Investment and payment of deposits. — (a) All such money deposited with such bank, trust company, savings and loan association, or savings bank, provided such savings and loan association and savings bank are federally insured, shall be held by such bank, trust company, federally insured savings and loan association or federally insured savings bank in a separate account in the name of a designated trustee, if the trust account established by the agreement, contract or plan is irrevocable, and in the names of a designated trustee and the purchaser, if such trust account is revocable, until such funds are released as herein provided.

(b) Money deposited in accounts required by this chapter may be held and invested by the trustee in a common trust fund or investment so long as the trustee and the bank, trust company, or savings and loan association can at all times ascertain the amount due the beneficiary or beneficiaries of the funds.

(c) All payments made under the agreement, contract or plan, and any earnings or interest thereon, shall be and remain funds with such bank, federally insured savings and loan association, federally insured savings bank, or trust company until the death of the person for whose service the funds were paid unless otherwise provided in this part. [Acts 1963, ch. 316, § 2; 1981, ch. 121, §§ 3-5; T.C.A., §§ 62-529, 62-530(a); Acts 1985, ch. 230, §§ 1-3.]

Law Reviews. Preneed Funeral Contracts in Tennessee, 11 Mem. St. U.L. Rev. 231.

NOTES TO DECISIONS

1. When Deposit Required.

Where the materials contracted for were governed by statute and the undisputed proof showed a future delivery of the materials, the purchase moneys paid under the contract

should have been deposited in a bank or trust company in a separate account. *Whaley v. Holly Hills Mem. Park*, 490 S.W.2d 532 (Tenn. Ct. App. 1972).

62-5-403. Revocability — Refundability — Transferability of funds — Identification of merchandise and services to be furnished — Effect on legal remedies — Prepayment of sales or use tax. — (a)(1) The agreement, contract or plan shall state whether the trust account it establishes is revocable or irrevocable.

(2) In the event such trust account is irrevocable, the agreement contract or plan shall state on its face and in bold type the following words:

THE TRUST ACCOUNT ESTABLISHED BY THIS CONTRACT IS IRREVOCABLE, AND THE FUNDS PAID HEREUNDER ARE NOT REFUNDABLE. ACCUMULATED TRUST PRINCIPAL AND INTEREST ARE FREELY TRANSFERABLE TO SATISFY FUNERAL EXPENSES AT ANY LICENSED FUNERAL ESTABLISHMENT AS PROVIDED BY LAW.

(b) If such trust account is revocable, the purchaser of the merchandise or services under the agreement, contract or plan shall be entitled to receive any or all of the payments made and any earnings or interest thereon upon demand on such bank, federally insured savings and loan association, federally insured savings bank or trust company prior to the death of the beneficiary of the agreement.

(c) The agreement, contract, or plan shall disclose clearly whether the funds identified as having been paid or to be paid:

(1) Are to be applied to the price of funeral merchandise and services to be selected by a designated person at the time of the death of the person for whom the funds were paid;

(2) Fully pay for the funeral merchandise and services (or their equivalent) identified therein; or

(3) Fully pay for the funeral merchandise and services (or their equivalent) identified therein, if and only if the prevailing price thereof at the time of the death of the person for whom the funds were paid does not exceed the amount in the trust account at that time.

(d) In the event that subdivision (c)(1) is applicable, the agreement, contract or plan shall state on its face and in bold type the following language:

(Purchaser's Signature)
**TRUST ACCOUNT EXCEEDS THE PREVAILING PRICE (AT THE TIME
OF SELECTION) OF THE FUNERAL MERCHANDISE AND SERVICES
SELECTED, THE BALANCE REMAINING SHALL BE REFUNDED TO**

(Name)

(e) Nothing in this section shall be construed to deprive the parties to the agreement, contract or plan of any available legal remedies for a breach thereof. The liability of the purchaser for such breach shall be limited to ten percent (10%) of the earnings and/or interest on the trust account as of the date of the breach.

(f) The seller shall offer the purchaser the option to pay any applicable sales or use tax in the related merchandise or services at the time the contract is entered into. If the purchaser chooses to pay the tax, it shall be remitted to the department by the seller and shall be considered full payment for the sales or use tax on the selected merchandise or services, despite any changes in tax rate or cost of merchandise or services which may occur by the time of actual use. If the purchaser selected a revocable contract and later chooses to revoke, the amount of tax paid shall be refunded by the seller who may then claim that amount as a credit against any sales or use tax then due from the seller. [Acts 1963, ch. 316, § 3; 1981, ch. 121, §§ 4, 5; T.C.A., § 62-530; Acts 1985, ch. 230, § 4; 1986, ch. 825, § 1; 1986, ch. 925, §§ 1, 2; 1996, ch. 958, § 2.]

Cited: Whaley v. Holly Hills Mem. Park, 490 S.W.2d 532 (Tenn. Ct. App. 1972).

62-5-404. Payment and control of fund upon death. — (a) Upon the death of the person for whose services the funds were paid, the same shall be paid by the bank, federally insured savings and loan association, federally

insured savings bank, or trust company to the named trustee upon the trustee's proper demand.

(b) The trustee shall pay over the money to the person, association, partnership, firm or corporation furnishing the services or merchandise only after the trustee has been furnished with a certified copy of the death certificate of such person, together with a verified statement setting forth that all of the terms and conditions of such agreement have been fully performed by the person, association, partnership, firm or corporation.

(c) The trustee shall pay any balance remaining in the fund after payment for the merchandise and services as set forth in the agreement, contract or plan to the purchaser or the purchaser's estate. [Acts 1963, ch. 316, § 4; 1981, ch. 121, § 6; T.C.A., § 62-531; Acts 1985, ch. 230, §§ 5, 6.]

Law Reviews. Preneed Funeral Contracts in Tennessee, 11 Mem. St. U.L. Rev. 231.

Cited: Whaley v. Holly Hills Mem. Park, 490 S.W.2d 532 (Tenn. Ct. App. 1972).

62-5-405. Powers and duties of commissioner. — (a) The commissioner of commerce and insurance shall administer the provisions of this part.

(b) The commissioner shall promulgate and may from time to time revise rules and regulations for carrying out the intentions of this part in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The commissioner shall require an annual audit to ensure that each person, firm, or corporation promising to pay or arrange for funeral services under this chapter will be able to perform its contract with the purchaser.

(c) The commissioner may charge an examination fee for such audits as are made pursuant to this section. Such funds are to be retained by the department of commerce and insurance as expendable receipts.

(d) The commissioner shall collect a fee for the registration of any person, association, partnership, firm or corporation engaged in selling any agreement, contract or plan permitted under this part.

(e) In addition to or instead of any lawful disciplinary action under this part, the commissioner, may at the commissioner's discretion, assess a civil penalty of not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000) per violation of any provision of this part, or any rule or regulation promulgated hereunder. [Acts 1963, ch. 316, § 5; 1965, ch. 185, § 1; impl. am. Acts 1971, ch. 137, § 2; Acts 1981, ch. 121, § 7; 1981, ch. 416, § 5; T.C.A., § 62-532; Acts 1985, ch. 230, §§ 7, 8; 1992, ch. 922, §§ 8-10; 1997, ch. 400, § 2.]

Law Reviews. Preneed Funeral Contracts in Tennessee, 11 Mem. St. U.L. Rev. 231.

Cited: Whaley v. Holly Hills Mem. Park, 490 S.W.2d 532 (Tenn. Ct. App. 1972).

62-5-406. Penalties. — A violation of this part is a Class C misdemeanor. [Acts 1963, ch. 316, § 6; 1972, ch. 553, § 5; 1981, ch. 121, § 8; T.C.A., § 62-533; Acts 1989, ch. 591, § 113.]

Cross-References. Penalty for Class C misdemeanor, § 40-35-111.

in Tennessee, 11 Mem. St. U.L. Rev. 231.

Law Reviews. Preneed Funeral Contracts

Cited: Whaley v. Holly Hills Mem. Park, 490 S.W.2d 532 (Tenn. Ct. App. 1972).

62-5-407. Injunction — Petition for declaration that revocable trust account irrevocable. — (a) In addition to other remedies, an action of injunction may be brought and maintained by the state of Tennessee or any other interested party to enjoin the violation of this part.

(b) Contracts for future funeral services which establish revocable trust accounts due to their execution under prior state law, or establish revocable trust accounts by their terms, may be declared irrevocable by a chancery, circuit, probate or general sessions court upon petition by the purchaser. Such revocable trust accounts declared irrevocable by a county executive prior to July 1, 1981, upon petition by the purchaser of the contract establishing such account shall be deemed irrevocable. [Acts 1963, ch. 316, § 7; 1981, ch. 121, §§ 1, 9; T.C.A., § 62-534.]

Cited: Whaley v. Holly Hills Mem. Park, 490 S.W.2d 532 (Tenn. Ct. App. 1972).

62-5-408. Exclusions. — Nothing in this part shall be construed to apply to any contract or security which under pre-existing laws is subject to regulation or registration by any division of the department of commerce and insurance, nor shall it apply to any burial association where the certificate for burial benefits does not exceed one hundred dollars (\$100). [Acts 1963, ch. 316, § 8; impl. am. Acts 1971, ch. 137, § 1; Acts 1981, ch. 121, § 10; T.C.A., § 62-535.]

Law Reviews. Preneed Funeral Contracts in Tennessee, 11 Mem. St. U.L. Rev. 231.

Cited: Whaley v. Holly Hills Mem. Park, 490 S.W.2d 532 (Tenn. Ct. App. 1972).

NOTES TO DECISIONS

1. Application.

A cemetery corporation is not entitled to claim the benefits of this chapter. Garrett v.

Forest Lawn Mem. Gardens, Inc., 588 S.W.2d 309 (Tenn. Ct. App. 1979).

62-5-409. Fraud in contracts for future services. — In civil actions, in which the prevailing party proves fraud relative to a contract for future services under this part, such prevailing party shall receive treble damages together with attorneys' fees, costs, and interest. [Acts 1997, ch. 400, § 1.]

Cross-References. Fraud as to pre-need sales contracts, § 46-2-411.

PART 5—CREMATION

62-5-501. Part definitions. — As used in this part, unless the context otherwise requires:

(1) — (3) [Deleted by 2000 amendment.]

(4) "Body parts" means limbs or other portions of the anatomy that are removed from a living person for medical purposes during biopsy, treatment, or surgery. "Body parts" also includes dead human bodies that have been donated to science for purposes of medical education or research and any parts of such a dead human body that were removed for those purposes. Nothing in this part shall be construed to permit the cremation of medical waste at the request of a hospital or other institution. Only the individual from whose body the parts

were removed, or the individual's duly appointed representative, may make arrangements with the crematory for the cremation of body parts;

(5) "Casket" means a rigid container that is designed for the encasement of a dead human body and that is constructed of wood, metal, or another rigid material, is ornamented and lined with fabric, and may or may not be combustible;

(6) [Deleted by 2000 amendment.]

(7) "Temporary container" means a receptacle for cremated remains composed of cardboard, plastic, metal, or another material that can be closed in a manner that prevents the leakage or spillage of the cremated remains and the entrance of foreign material, and that is of sufficient size to hold the cremated remains until they are placed in an urn or scattered; and

(8) "Urn" means a receptacle designed to encase cremated remains permanently. [Acts 1999, ch. 215, § 1; 2000, ch. 779, § 1.]

Compiler's Notes. Former § 62-5-501 (Acts 1982, ch. 703, § 1), concerning designation by deceased and disposal of ashes, was repealed by Acts 1999, ch. 215, § 12.

Amendments. The 2000 amendment deleted (1), (2), (3), and (6), which formerly read: "(1) 'Alternative container' means a receptacle, other than a casket, in which a dead human body or body parts are transported to a crematory facility and placed in the cremation chamber for cremation, and that meets all of the following requirements: (A) Is composed of readily combustible materials that are suitable for cremation; (B) Must be capable of being closed in order to provide a complete covering for the dead human body or body parts; (C) Is resistant to leakage or spillage; (D) Is sufficiently rigid to be handled readily; and (E) Provides protection for the health and safety of crematory personnel;

"(2) 'Antemortem cremation authorization

form' means an instrument executed by an individual or individual's guardian, custodian or other personal representative, prior to death, to provide instructions and authorization for cremation following the death of a human being or removal of body parts to be cremated;

"(3) 'Authorizing agent' means the person or persons who are entitled to order the cremation of a decedent or body parts and to order the final disposition of the cremated remains of a decedent or body parts;

"(6) 'Cremation authorization form' means an instrument executed by an authorizing agent, other than the deceased, authorizing the cremation of a deceased human being or body parts of a human being following the death of a human being or removal of body parts to be cremated."

Effective Dates. Acts 2000, ch. 779, § 32, May 22, 2000.

62-5-502. [Repealed.]

Compiler's Notes. Former § 62-5-502 (Acts 1999, ch. 215, § 14, July 1, 1999), concerning the antemortem cremation authorization form,

was repealed by Acts 2000, ch. 779, § 2, effective May 22, 2000.

62-5-503. [Repealed.]

Compiler's Notes. Former 62-5-503 (Acts 1999, ch. 215, § 14, July 1, 1999), concerning persons authorized to have a body cremated,

was repealed by Acts 2000, ch. 779, § 3, effective May 22, 2000.

62-5-504. Prerequisites to cremation. — (a) No operator of a crematory facility shall cremate or allow the cremation at a crematory facility of a dead human body, other than one that was donated to science for purposes of medical education or research, until all of the following have occurred:

(1) The requirements of § 62-5-513 have been met, unless the decedent having died from a virulent communicable disease, the department of health or board of health having territorial jurisdiction where the death of the decedent

occurred requires by rule or order the cremation to occur prior to such requirements being met;

(2) The operator has received a burial or burial-transit permit that authorizes the cremation of the decedent; and

(3) [Deleted by 2000 amendment.]

(4) The operator has received any other documentation required by this state or a political subdivision of this state.

(b) [Deleted by 2000 amendment.] [Acts 1999, ch. 215, § 4; 2000, ch. 779, §§ 4, 5, 30.]

Amendments. The 2000 amendment rewrote (a)(1), which read: "A period of at least twenty-four (24) hours has elapsed since the decedent's death, unless the decedent having died from a virulent communicable disease, the department of health or board of health having territorial jurisdiction where the death of the decedent occurred requires by rule or order the cremation to occur prior to the end of that period;"; deleted (a)(3), which read "The operator has received a completed cremation autho-

rization form that authorizes the cremation of the decedent. A blank cremation authorization form shall be provided by the operator; and"; and deleted (b), concerning requirements for cremation of bodies or body parts which had been donated to science.

Effective Dates. Acts 2000, ch. 779, § 32. May 22, 2000.

Section to Section References. This section is referred to in § 62-5-507.

62-5-505. [Repealed.]

Compiler's Notes. Former § 62-5-505 (Acts 1999, ch. 215, § 14. July 1, 1999), concerning cremation authorization form requirements

other than for scientifically donated remains, was repealed by Acts 2000, ch. 779, § 6, effective May 22, 2000.

62-5-506. [Repealed.]

Compiler's Notes. Former § 62-5-506 (Acts 1999, ch. 215, § 14. July 1, 1999), concerning cremation authorization form requirements, in-

cluding scientifically donated remains, was repealed by Acts 2000, ch. 779, § 7, effective May 22, 2000.

62-5-507. Crematory facility operator duties. — (a) The operator of a crematory facility may schedule the time for the cremation of a dead human body to occur at the operator's own convenience at any time after the conditions set forth in § 62-5-504 have been met and the decedent or body parts have been delivered to the facility, unless, in the case of a dead human body, the operator has received specific instructions to the contrary from the licensed establishment. The operator of a crematory facility becomes responsible for a dead human body or body parts when the body or body parts have been delivered to or accepted by the facility or an employee or agent of the facility.

(b) No operator of a crematory facility shall fail to do either of the following:

(1) Upon receipt at the crematory facility of any dead human body that has not been embalmed, place the body in a holding or refrigerated facility at the crematory facility and keep the body in the holding or refrigerated facility until near the time the cremation process commences or until the body is held at the facility for eight (8) hours or longer. If the body is held for eight (8) hours or longer, place the body in a refrigerated facility at the crematory facility and keep the body in the refrigerated facility until near the time the cremation process commences; or

(2) Upon receipt of any dead human body that has been embalmed, place the body in a holding facility at the crematory facility and keep the body in the holding facility until the cremation process commences.

(c) No operator of a crematory facility shall fail to cremate, in its entirety with the body, the casket or container, if any, in which the body was delivered or accepted by the crematory facility, if the instructions for the disposition of the body so request such item to be cremated with the body; provided, that the crematory facility shall be permitted to remove any non-combustible materials from such casket or container prior to cremation.

(d) No operator of a crematory facility shall simultaneously cremate more than one (1) decedent or body parts removed from more than one (1) decedent or living person in the same cremation chamber. This subsection (d) does not prohibit the use of cremation equipment that contains more than one (1) cremation chamber.

(e) No operator of a crematory facility shall permit any person other than employees of the crematory facility, a licensed funeral director or a designee of a funeral director, and persons authorized pursuant to the instructions of the decedent or an heir or personal representative of the decedent, if any to be present in the holding facility or cremation room while any dead human bodies or body parts are being held there prior to cremation or are being cremated or while any cremated remains are being removed from the cremation chamber.

(f)(1) No operator of a crematory facility shall remove any dental gold, body parts, organs, or other items of value from a dead human body prior to the cremation or from the cremated remains after cremation unless the operator was acting under instructions which specifically authorize the removal thereof.

(2) No operator of a crematory facility who removes any dental gold, body parts, organs, or other items from a dead human body or assists in such removal shall charge a fee for doing so that exceeds the actual cost to the crematory facility for performing or assisting in the removal of such materials.

(g) Upon the completion of each cremation, the operator of a crematory facility shall remove from the cremation chamber all of the cremation residue that is practicably recoverable. If all of the recovered cremated remains will not fit in the urn selected or in the temporary container, the operator shall place the remainder in a separate temporary container, and the cremated remains placed in the separate temporary container shall be delivered, released, or disposed of together with those in the urn or other temporary container. Nothing in this section requires an operator of a crematory facility to recover any specified quantity or quality of cremated remains upon the completion of a cremation, but shall only require an operator to recover from the cremation chamber all of the cremation residue that is practically recoverable.

(h) No operator of a crematory facility shall knowingly represent that an urn or temporary container contains the recovered cremated remains of a specific decedent or of body parts removed from a specific decedent or living person when it does not. This section does not prohibit the making of such a representation because of the presence in the recovered cremated remains of de minimus amounts of the cremated remains of another decedent or of body parts.

(i) Operators of a crematory facility or a funeral director shall ship or cause to be shipped any cremated remains by a class or method of mail, common carrier service, or delivery service that has an internal system for tracing the location of the cremated remains during shipment and that requires a signed receipt from the person accepting delivery of the cremated remains.

(j) Operators of a crematory facility shall establish and maintain a system for accurately identifying each dead human body in the facility's possession, and for identifying each decedent or living person from whom body parts in the facility's possession were removed, throughout all phases of the holding and cremation process.

(k) No operator of a crematory facility shall knowingly use or allow the use of the same cremation chamber for the cremation of dead human bodies or human body parts and animals. [Acts 1999, ch. 215, § 7; 2000, ch. 779, §§ 8-15.]

Amendments. The 2000 amendment deleted "or the authorizing agent" following "establishment" from the end of the first sentence in (a); deleted "and subject to the prohibition set forth in subdivision (c)(1)" preceding "place the body" in (b)(1); rewrote (c) which read: "Unless the instructions contained in the cremation authorization form specifically provide otherwise, no operator of a crematory facility shall:

"(1) Remove any dead human body from the casket or alternative container in which the body was delivered to or accepted by the crematory facility; or

"(2) Fail to cremate the casket or alternative container in which the body was delivered or accepted, in its entirety with the body; provided, that the crematory facility shall be permitted to remove any non-combustible materials from the casket or alternative container prior to cremation"; substituted "and persons

authorized pursuant to the instructions of the decedent or an heir or personal representative of the decedent, if any" for "the authorizing agent for the cremation of the decedent, and persons authorized by the authorizing agent" in (e); substituted "the operator was acting under instructions which" for "cremation authorization form" in (f)(1); deleted the second and third sentences in (g), which read: "If the cremation authorization form specifies that the cremated remains are to be placed in an urn, the operator shall place them in the type of urn specified on the authorization form. If the authorization form does not specify that the cremated remains are to be placed in an urn, the operator shall place them in a temporary container"; and deleted "to an authorizing agent or a designee of an authorizing agent" preceding "that an urn" in the first sentence of (h).

Effective Dates. Acts 2000, ch. 779, § 32. May 22, 2000.

62-5-508. Final disposition of remains. — (a) — (c) [Deleted by 2000 amendment.]

(d)(1) Except as provided in subdivision (d)(2), no person shall:

(A) Dispose of the cremated remains of a dead human body or body parts in such a manner or in such a location that the cremated remains are commingled with those of another decedent or body parts removed from another decedent or living person; or

(B) Place the cremated remains of more than one (1) decedent or of body parts removed from more than one (1) decedent or living person in the same urn or temporary container.

(2) Notwithstanding the provisions of subdivision (d)(1), a person may:

(A) Scatter cremated remains at sea or by air or in a dedicated area at a cemetery used exclusively for the scattering on the ground of the cremated remains of dead human bodies or body parts;

(B) Commingle cremated remains of more than one (1) decedent or of body parts removed from more than one (1) decedent or living person or the placement in the same urn or temporary container of the cremated remains

of more than one (1) decedent or of body parts removed from more than one (1) decedent or living person if operating under specific instructions from the decedent or decedents or an heir or personal representative designated by the decedent or decedents to make such a decision; and

(C) If such person is operating under the decedent's instructions, commingle the cremated remains or body parts removed from another decedent or living person, after receipt of the cremated remains or such body parts, with those of another decedent or body parts removed from another decedent or living person. [Acts 1999, ch. 215, § 8; 2000, ch. 779, §§ 16-18.]

Amendments. The 2000 amendment deleted (a), (b), (c) which read: "(a) The authorizing agent who executed the form authorizing the cremation of a decedent is responsible for the final disposition of the cremated remains of the decedent or body parts.

"(b) If the cremation authorization form does not contain instructions for the final disposition of the cremated remains of the decedent or body parts, no arrangements for the disposition of the cremated remains are made within thirty (30) days after the completion of the cremation, and the cremated remains have not been picked up within such thirty-day period by the person designated to receive them on the authorization form or by the authorizing agent, the operator of the crematory facility may release or deliver them in person, or have them delivered to the person designated to receive them on the cremation authorization form or, if no person has been so designated, to the authorizing agent.

"(c)(1) If the cremation authorization form does not contain instructions for the final disposition of the cremated remains of the decedent or body parts, if no arrangements for the final disposition of the cremated remains are made within sixty (60) days after the completion of the cremation, and if the cremated remains have not been picked up by the person designated on the authorization form to receive them or, in the absence of such a designated person, by the authorizing agent, the operator of the crematory facility may dispose of the cremated remains in a grave, crypt, or niche at any time after the end of that sixty-day period.

"(2) If the cremation authorization form specifies the manner of the final disposition of the cremated remains, or if within that sixty (60) days after the completion of the cremation the authorizing agent makes arrangements for the final disposition of the cremated remains, and if either the arrangements have not been carried out within such sixty-day period because of the inaction of a party other than the operator of

the crematory facility or the authorizing agent fails to pick up the cremated remains within that sixty-day period, the operator may dispose of the cremated remains in a grave, crypt, or niche at any time after the end of that period.

"(3) When cremated remains are disposed of in accordance with this section, the authorizing agent who executed the cremation authorization form authorizing the cremation of the decedent or body parts is liable to the operator of the crematory facility or the licensed establishment for the cost of final disposition, which cost shall not exceed the reasonable cost for disposing of the cremated remains in a common grave or crypt in the county where the cremated remains were buried or placed in a crypt or niche."; substituted "if operating under specific instructions from the decedent or decedents or an heir or personal representative designated by the decedent or decedents to make such a decision;" for "when each authorizing agent who executed the cremation authorization form authorized the commingling of the cremated remains or the placement of the cremated remains in the same urn or temporary container on the authorization form," in (d)(2)(B); and rewrote (d)(2)(C), which read: "Commingle by the individual designated on the cremation authorization form authorizing the cremation of the decedent or body parts to receive the cremated remains, other than a funeral director or employee of a cemetery, or by the authorizing agent who executed the cremation authorization form, after receipt of the cremated remains, of the cremated remains with those of another decedent or of body parts removed from another decedent or living person or the placing of them by any such person in the same urn or temporary container with those of another decedent or of body parts removed from another decedent or living person".

Effective Dates. Acts 2000, ch. 779, § 32. May 22, 2000.

62-5-509. Written receipt for remains — Records. — (a) No operator of a crematory facility shall fail to ensure that a written receipt is provided to the person who delivers a dead human body or body parts to the facility for cremation.

(b) If the dead human body is other than one that was donated to science for purposes of medical education or research, the receipt shall be signed by both a representative of the crematory facility and the person who delivered the decedent to the crematory facility and shall indicate:

- (1) The name of the decedent;
- (2) The date and time of delivery;
- (3) The type of casket or container, if any, in which the decedent was delivered to the facility;
- (4) The name of the person who delivered the decedent to the facility, if applicable;
- (5) The name of the funeral home or other establishment with whom the delivery person is affiliated; and
- (6) The name of the person who received the decedent on behalf of the facility.

(c) If the dead human body was donated to science for purposes of medical education or research, the receipt shall indicate the name of the person who received the decedent on behalf of the facility.

(d)(1) At the time of releasing cremated remains, an operator of a crematory facility shall ensure that a written receipt signed by both a representative of the crematory facility and the person who received the cremated remains is provided to the person who received the cremated remains. Unless the cremated remains are those of a dead human body that was donated to science for purposes of medical education or research or are those of body parts, the receipt shall indicate:

- (A) The name of the decedent;
- (B) The date and time of the release;
- (C) The name of the person to whom the cremated remains were released;
- (D) If applicable, the name of the funeral home, cemetery, or other entity to whom the cremated remains were released; and
- (E) The name of the person who released the cremated remains on behalf of the crematory facility.

(2) If the cremated remains are those of a dead human body that was donated to science for purposes of medical education or research or are those of body parts, the receipt shall be signed by both a representative of the crematory facility and the person who received the cremated remains and such receipt shall indicate the date and time of the release. For other cremated remains, the receipt required by this section shall accompany the cremated remains. The signature of the person whose name is on the delivery receipt to accept delivery of the cremated remains meets the requirement of this section that the person receiving the cremated remains sign the receipt provided by the crematory facility.

(e) During the time that the crematory remains engaged in the business of cremating dead human bodies or body parts, the crematory facility shall keep the following for a period of at least seven (7) years:

- (1) A copy of each receipt issued upon acceptance by or delivery to the crematory facility of a dead human body;
- (2) A record of each cremation conducted at the facility, containing at least the name of the decedent or, in the case of body parts, the name of the decedent

or living person from whom the body parts were removed, the date and time of the cremation, and the final disposition made of the cremated remains;

(3) A copy of each delivery receipt issued under this section; and

(4) A separate record of the cremated remains of each decedent or the body parts removed from each decedent or living person that were disposed of containing at least the name of the decedent, the date and time of the cremation, and the location, date, and manner of final disposition of the cremated remains.

(f) All records required to be maintained under this part are subject to inspection by the board of funeral directors and embalmers or an authorized representative of the board, upon reasonable notice, at any reasonable time. [Acts 1999, ch. 215, § 9; 2000, ch. 779, §§ 19-23.]

Amendments. The 2000 amendment substituted “or container, if any,” for “or alternative container” in (b)(3); deleted “if the dead human body was donated to science for purposes of medical education or research” following “facility” in (b)(6); rewrote (c), which read: “The receipt shall consist of a copy of the cremation authorization form authorizing the cremation of the decedent or body parts that has been signed by both a representative of the crematory facility and the person who delivered the decedent or body parts to the crematory facility and that indicates the date and time of the delivery. The operator may provide the copy of the receipt to the person who delivered the decedent or body parts to the facility either in person or by certified or registered mail, return receipt requested”; rewrote (d)(2) which read: “If the cremated remains are those of a dead human body that was donated to science for purposes of medical education or research or

are those of body parts, the receipt shall consist of a copy of the cremation authorization form that authorizes the cremation of the decedent or body parts that has been signed by both a representative of the crematory facility and the person who received the cremated remains and that indicates the date and time of the release. If the cremated remains were delivered to the authorizing agent or other individual designated on the cremation authorization form, the receipt required by this section shall accompany the cremated remains, and the signature of the authorizing agent or other designated individual on the delivery receipt meets the requirement of this section that the person receiving the cremated remains sign the receipt provided by the crematory facility”; and substituted “this section” for “subsection (b)” in (e)(3).

Effective Dates. The 2000 amendment, ch. 779, § 32. May 22, 2000.

62-5-510. Removal of devices or implants from remains. —

(a) [Deleted by 2000 amendment.]

(b) If a funeral director delivers the decedent to a crematory facility, the funeral director shall take reasonable precautions to ensure necessary actions are taken to remove a device or implant from the decedent, or to render the device or implant nonhazardous prior to delivering the decedent to the crematory facility if the funeral director is aware of such a device or implant. [Acts 1999, ch. 215, § 10; 2000, ch. 779, § 24.]

Amendments. The 2000 amendment deleted (a) which read: “A person executing a cremation authorization form as the authorizing agent shall use diligent efforts to determine whether a pacemaker, cardiac defibrillator, or any other mechanical or radioactive device or implant is present in the decedent’s body that poses a hazard to the health or safety of the personnel of the crematory or to the cremation chamber during the cremation process and

shall indicate the presence of the device or implant on the cremation authorization form. If the decedent is to be delivered to the crematory facility by a funeral director, the person executing the authorization form shall inform the funeral director of the presence of the device or implant”.

Effective Dates. Acts 2000, ch. 779, § 32. May 22, 2000.

62-5-511. Crematory facility operator liability. — (a) The operator of a crematory facility is not liable for damages in a civil action for any of the following actions or omissions, unless the actions or omissions were made with malicious purpose, in bad faith, or in a wanton or reckless manner:

(1) Having performed the cremation of the decedent, or having released or disposed of the cremated remains, in accordance with the instructions set forth by the decedent or an heir or personal representative of the decedent;

(2) Having performed the cremation of the decedent or body parts removed from the decedent or living person or having released or disposed of the cremated remains in accordance with the instructions set forth by the decedent or an heir or personal representative of the decedent; or

(3) Any failure to correctly identify a dead human body prior to cremation.

(b) The operator of a crematory facility is not liable for damages in a civil action for refusing to accept a dead human body or body parts or to perform a cremation under any of the following circumstances, unless the refusal was made with malicious purpose, in bad faith, or in a wanton or reckless manner:

(1) The operator has actual knowledge that there is a dispute regarding the cremation of the decedent or body parts, and the operator has not received an order of the court having jurisdiction ordering the cremation of the decedent or body parts;

(2) The operator has a reasonable basis for questioning the accuracy of any of the information or statements provided to the operator with respect to the cremation of the decedent or body parts; or

(3) The operator has any other lawful reason for refusing to accept the dead human body or body parts or to perform the cremation.

(c) The operator of a crematory facility is not liable for damages in a civil action in connection with the cremation of, or disposition of, the cremated remains of any dental gold, jewelry, or other items of value delivered to the facility with a dead human body or body parts unless the actions or omissions of the operator were made with malicious purpose, in bad faith, or in a wanton or reckless manner.

(d) This section does not create a new cause of action against or substantive legal right against the operator of a crematory facility;

(e) This section does not affect any immunities from civil liability or defenses established by law to which the operator of a crematory may be entitled. [Acts 1999, ch. 215, § 11; 2000, ch. 779, §§ 25-28.]

Amendments. The 2000 amendment substituted “by the decedent or an heir or personal representative of the decedent” for “in the cremation authorization form executed by the decedent on an antemortem basis” in (a)(1); substituted “by the decedent or an heir or personal representative of the decedent” for “in a cremation authorization form executed in person by the person authorized to serve as the authorizing agent for the cremation of the decedent or for the cremation of body parts of the decedent or living person, named in the cremation autho-

rization form” in (a)(2); substituted “provided to the operator with respect to the cremation of the decedent or body parts” for “contained in a cremation authorization form executed that authorizes the cremation of the decedent or body parts” in (b)(2); deleted (c)(1), which read: “The cremation authorization form authorizing the cremation of the decedent or body parts contains specific instructions for the removal or recovery and disposition of any such dental gold, jewelry, or other items of value prior to or after the cremation, and the operator has failed

to comply with the written instructions”; and incorporated former (c)(2) into the present provisions of (c).

Effective Dates. Acts 2000, ch. 779, § 32. May 22, 2000.

62-5-512. Cremation without a casket. — No operator of a crematory facility shall require a person to be cremated in a casket; provided, that in the discretion of the operator of a crematory facility, a container composed of readily combustible materials that is suitable for cremation, other than a casket, may be required. [Acts 2000, ch. 779, § 29.]

Effective Dates. Acts 2000, ch. 779, § 32. May 22, 2000.

62-5-513. Delay of cremation. — If a person who signs the death certificate, a district attorney general or any law enforcement officer, or an emergency medical or rescue worker, emergency medical technician or paramedic who attended the person immediately prior to or after such person’s death, signs a written statement requesting the delay of a cremation based upon a reasonable belief that the cause of death may have been due to other than accidental or natural causes, then the cremation of a dead human body shall be delayed based upon such request. [Acts 2000, ch. 779, § 31.]

Effective Dates. The 2000 amendment, ch. 779, § 32. May 22, 2000.

Section to Section References. This section is referred to in § 62-5-504.

PART 6—CONTINUING EDUCATION

62-5-601. Continuing education requirement for license renewals. —

(a) Every licensed embalmer holding a Tennessee license shall submit with the renewal application evidence of satisfactory completion of a continuing education program in mortuary science approved by the board.

(b) Beginning January 1, 2000, every licensed funeral director holding a Tennessee license shall submit with the renewal application evidence of satisfactory completion of a continuing education program in funeral directing approved by the board.

(c) Beginning January 1, 2000, each licensee holding a Tennessee license shall submit with the license renewal application satisfactory proof of completion of a minimum of ten (10) hours of continuing education coursework approved by the board. Compliance with such continuing education coursework shall be mandatory for renewal of a license.

(d) Any licensee who is sixty-five (65) years of age or older or who has held a license continuously for ten (10) years on or before October 1, 2000, shall be exempt from the continuing education requirements in this chapter. In addition, a licensee who demonstrates to the board on the prescribed form that such licensee is disabled and is not practicing either funeral directing or embalming is exempt from the continuing education requirements set forth in this chapter.

(e) The board, for good cause, shall have the power to excuse licensees from the continuing education requirements set forth in this chapter.

(f) Continuing education credit(s) may be obtained by attending and participating in continuing education courses or workshops approved by the board.

(g) No continuing education hours from one (1) licensing period may be carried over to a subsequent licensing period. [Acts 1997, ch. 275, § 2.]

62-5-602. Reciprocity for nonresident licensees. — A nonresident licensee of Tennessee who holds a valid license as a funeral director or embalmer issued by another state may satisfy continuing education requirements through reciprocity, if the out-of-state credits meet the minimum standard requirements of this chapter. [Acts 1997, ch. 275, § 3.]

62-5-603. Approval of courses — Qualification. — A continuing education course or workshop shall be qualified for approval if the board determines that it:

- (1) Constitutes an organized program of learning, including a symposium, which contributes directly to the professional competency of the licensee;
- (2) Is related to the practice of mortuary science or funeral directing;
- (3) Is conducted by individuals considered experts in the subject matter of the program by reason of education, training or experience; and
- (4) Is accompanied by a paper, manual or written outline which substantially describes the subject matter of the program. [Acts 1997, ch. 275, § 4.]

62-5-604. Credit for serving as lecturer or discussion leader. — A licensee who serves as a lecturer or discussion leader of an approved continuing education course or workshop may satisfy up to twenty-five percent (25%) of the continuing education requirement. Repetitious presentations shall be counted once. [Acts 1997, ch. 275, § 5.]

62-5-605. Application for approval — Reports. — (a) Any organization or individual wishing to hold seminars with employees or other licensees shall:

- (1) Submit to the board no less than sixty (60) days from the planned event, an application supplied by the board outlining the event, speaker and course description; provided, that for good cause, an amendment to the application may be submitted to the board no less than thirty (30) days from the planned event; and
- (2) Upon completion of an application, be notified of the approval or disapproval of the course a minimum of thirty (30) days before the courses are offered, or upon completion of an amendment, be notified of the approval or disapproval of the amendment a minimum of ten (10) days before the courses are offered; and
- (3) Following a seminar, submit paperwork with the following information:
 - (A) Name of person attending;
 - (B) License number;
 - (C) Date of attendance; and
 - (D) Hours completed within thirty (30) days.

(b) The board may waive the requirements of subsection (a) and approve continuing education courses for good cause shown. [Acts 1997, ch. 275, § 6; 2001, ch. 187, § 1.]

Amendments. The 2001 amendment, in (a)(1), substituted “sixty (60) days” for “ninety (90) days” and added the proviso; and, in (a)(2), substituted “thirty (30) days” for “ sixty (60) days” and inserted “, or upon completion of an

amendment, be notified of the approval or disapproval of the amendment a minimum of ten (10) days before the courses are offered”.

Effective Dates. Acts 2001, ch. 187, § 2. May 10, 2001.

62-5-606. Written list of approved courses. — The board may annually or on request provide licensees with a written list of approved continuing education courses. This list shall include course offerings not only in Tennessee but also other states as deemed necessary by the board in order to make available a wide variety of courses and offerings to its licensees. [Acts 1997, ch. 275, § 7.]

62-5-607. Review of approved courses. — (a) Each continuing education course approved by the board may subsequently be reviewed, and upon evidence of significant variation from the program application submitted, all or any part of the approved hours may be disapproved.

(b) The board or its representative shall be admitted to continuing education courses at no charge in order to monitor the licensees present, the content of the course, and supporting paperwork. [Acts 1997, ch. 275, § 8.]

62-5-608. Oversight committee. — (a) The board may appoint a committee to oversee the application process and monitoring of continuing education programs.

(b) In the event of a denial, in whole or in part, of any application for accreditation or approval of a continuing education course or workshop, the applicant or licensee shall have a right to a conference before the continuing education committee of the board. If dissatisfied with the ruling of the committee, the applicant or licensee may be granted a conference before the full board. [Acts 1997, ch. 275, § 9.]

62-5-609. Proof of coursework required for license renewal. — Beginning January 1, 2000, each applicant for renewal of a funeral director’s or embalmer’s license in Tennessee shall submit the renewal fee accompanied by written proof of each continuing education course(s) the person has attended during the previous two (2) years. No applications for renewal will be considered without complete documentation of the continuing education hours and the renewal fee, unless exempted by this chapter. [Acts 1997, ch. 275, § 10.]

Cross-References. License renewals, § 62-5-315.

62-5-610. Failure to meet requirements — Falsification of course records. — (a) The license of any funeral director or embalmer who has not met the continuing education requirements prescribed in this chapter shall not be renewed.

(b) Any licensee who submits credits for continuing education hours not attended or incomplete, or who submits falsified information shall be subject to discipline by the board. [Acts 1997, ch. 275, § 11.]

Cross-References. License renewals, § 62-5-315.

62-5-611. Withdrawal of approval for program. — Approval of any continuing education program may be withdrawn by the board if:

- (1) The establishment or conduct of a program violates, or fails to meet the requirements of, the provisions of this chapter or other applicable laws; or
- (2) The information contained in the application for approval is materially inaccurate or misleading. [Acts 1997, ch. 275, § 12.]

Cited: *Craigmiles v. Giles*, — F. Supp. 2d —, 2000 U.S. Dist. LEXIS 22435 (E.D. Tenn. July 18, 2000).

TITLE 67

TAXES AND LICENSES

CHAPTER 5

PROPERTY TAXES

SECTION.

PART 2—EXEMPTIONS

67-5-214. Cemeteries and monuments.

PART 18—COLLECTION

67-5-1801. Collector — Place of payment —

Collection agent — Evidence of taxes — Deposits — Subrogation — Electronic funds transfers.

PART 2—EXEMPTIONS

67-5-214. Cemeteries and monuments. — (a) Places of burial used as such, monuments of the dead and all nonprofit cemeteries shall be exempt from taxation.

(b)(1) There shall also be exempt from taxation any real property owned by cemeteries operated on a for-profit basis, which has been prepared and is being held for burial purposes; provided, that the amount of such property shall not exceed the reasonable expectation of public needs.

(2) Cemeteries shall be required to apply for exemption and obtain approval of exemption by the state board of equalization if charges are imposed for use of burial plots. [Acts 1973, ch. 226, § 5; 1980, ch. 689, § 1; T.C.A., § 67-515; Acts 1994, ch. 541, § 9.]

Compiler's Notes. Acts 1994, ch. 541, § 10 provided that the amendment by that act (amending (b)(2)) shall not be construed to terminate the tax-exempt status of any parcel of property on January 1, 1995.

Section to Section References. Sections 67-5-211 — 67-5-214 are referred to in § 67-5-201.

Textbooks. Tennessee Jurisprudence, 23 Tenn. Juris., Taxation, § 20.

NOTES TO DECISIONS

DECISIONS UNDER PRIOR LAW

1. Cemeteries.

Former statute operated to exempt from taxation the real estate and improvements, and the improvement fund of an incorporated cemetery company, but did not operate to exempt

its personal effects, and did not operate to exempt its stock in the hands of the stockholders, based upon such effects. *Forest Hill Cem. Co. v. Creath*, 127 Tenn. 686, 157 S.W. 412 (1913).

Collateral References. Cemetery, exemption as affected by use to which property is put

or for which it is intended. 168 A.L.R. 283. Exemptions ⇌ 371.191-251.5.

PART 18—COLLECTION

67-5-1801. Collector — Place of payment — Collection agent — Evidence of taxes — Deposits — Subrogation — Electronic funds transfers. — (a) The county trustee shall act as collector of all county property taxes and of all municipal property taxes when the municipality does not collect its own taxes. A municipality that certifies its delinquent tax list to the trustee or delinquent tax attorney may authorize the county officers, including the court clerk at a delinquent tax sale and the committee established in § 67-5-2507(b), to do all things authorized under this chapter with respect to the collection of delinquent municipal taxes, including the ability to convey any interest of the municipality in the property sold.

(b) These taxes shall be paid to the trustee at the trustee's office at the county seat or at such other place or places as the trustee may designate. A trustee is authorized to adopt a policy of not accepting current county real property taxes due when delinquent real property taxes are owing; provided, that this prohibition shall not apply when the obligor of one (1) or more of the prior year's taxes is in bankruptcy or there is a dispute as to the responsibility for such taxes.

(c)(1) The county trustee may designate a bank and/or the branches which are located within the county to act as a collection agent for the trustee and accept the deposit of county and municipal property taxes. The county trustee shall establish an account with the bank for such purpose which shall be restricted to the deposit of county and municipal property taxes.

(2) The taxpayer shall be required to furnish to the bank evidence of the property taxes which are due and payable and in no case shall such taxes be accepted by the bank when such taxes are delinquent. The bank shall use a deposit form for deposit of property taxes which shall contain the following language: "In accepting deposits of taxpayers, the bank is acting as an agent for the trustee." The taxpayer will be provided a copy of the deposit form at the time of the deposit. The bank shall provide to the trustee on a daily basis such evidence of the taxes deposited into the account and a copy of the deposit forms.

(3) The county trustee shall determine whether the correct amount of property taxes was deposited into the account and whether interest and penalty are due on such property before issuance of the tax receipt to the taxpayer.

(4) The taxpayer making a payment of property taxes in such manner shall not be relieved of penalty and interest upon failure of the bank to provide evidence of the deposit of such taxes prior to the due date.

(d) When any person pays property taxes that are the legal obligation of a third party by mistake, inadvertence or otherwise, the person making the payment is subrogated to the rights of the government to which the property taxes are paid, against the person whose property taxes were paid. However, at any judicial sale of such property, the clerk shall not enter a bid as provided in § 67-5-2506, or any other provision of law, on behalf of any government entity.

(e)(1) Any county trustee may accept partial payments of property taxes.

(2) Prior to any county trustee accepting partial payment of property taxes, the county trustee shall file a plan with the comptroller of the treasury. The

plan shall indicate that the county trustee's office has the accounting system technology to implement a program for partial payment of property taxes. The plan shall also indicate whether such a program will be implemented within the existing operating resources of the office or indicate prior approval of the county legislative body if additional operating resources are needed. The provisions of this subdivision do not apply to any county which has implemented a partial payment program prior to April 19, 1995.

(3) A county trustee may accept taxes paid by electronic funds transfer, including, but not limited to, bank customer preauthorized payments, wire transfers or ACH credits. If the entire amount of taxes due is not paid prior to the delinquency date for such taxes, the entire property shall be subject to the tax lien and enforcement by a tax sale or other legally authorized procedures. Unless partial payment is made by electronic transfer of funds, if the county trustee accepts partial payment within ten (10) days of the delinquency date, or at any time following such delinquency date, then prior to accepting such payment the county trustee must inform the taxpayer of the delinquency date and must advise such taxpayer that the property may be subjected to tax lien and enforcement by tax sale or other legally authorized procedures.

(4) Direct bank transfers and partial payments are subject to the following guidelines:

(A) Vouchers issued pursuant to the tax relief program shall be used as all or a portion of the final payment;

(B) A receipt shall be issued to the taxpayer for any partial payment of taxes. The receipt shall state that:

(i) The payment is a partial payment of property taxes;

(ii) The balance owing on such taxes that must be paid prior to the delinquency date; and

(iii) A failure to pay the entire amount of the taxes prior to the delinquency date subjects any unpaid taxes to the penalties and interest applicable to delinquent taxes and subjects the entire property on which there is a lien for taxes to a tax sale. The final partial payment shall show that a zero (0) balance is owing or shall state that the taxes are paid in full. Receipts shall also be sent to the taxpayer for payments made by direct bank transfer of funds; and

(C) In any county having a metropolitan form of government and a population in excess of five hundred thousand (500,000), according to the 1990 federal census or any subsequent federal census, the trustee may set a minimum requirement of no more than the lesser of fifteen percent (15%) or twenty-five dollars (\$25.00) for any partial payment. [Acts 1875, ch. 91, § 1; 1907, ch. 602, § 47; integrated in Shan., § 865a1; Code 1932, § 1546; modified; T.C.A. (orig. ed.), § 67-1104; Acts 1987, ch. 346, § 4; 1993, ch. 78, § 1; 1993, ch. 315, § 23; 1994, ch. 812, § 1; 1995, ch. 111, §§ 1, 2; 1995, ch. 259, § 1; 1996, ch. 787, §§ 1, 5, 8; 1997, ch. 187, §§ 1-3.]

Cross-References. Collection of taxes on utilities and carriers, §§ 67-5-1331 — 67-5-1334.

Personal property sales, withholding proceeds for personal property tax satisfaction;

liability for failure to withhold, § 67-5-2003.

Section to Section References. This part is referred to in §§ 67-1-701, 67-1-1615, 67-1-1616.

This section is referred to in § 67-1-1629.

Textbooks. Tennessee Jurisprudence, 19 county trustee to collect municipal property
Tenn. Juris., Municipal Corporations, § 93; 23 taxes, OAG 99-183 (9/17/99).
Tenn. Juris., Taxation, § 52. **Cited:** State v. Dugan, 105 Tenn. 245, 58 S.W.
Attorney General Opinions. Duty of 259 (1900).

NOTES TO DECISIONS

1. **Legislative Authority to Collect Tax.** from the legislature. Meriwether v. Garrett,
Taxes can be collected only under authority 102 U.S. 472, 26 L. Ed. 197 (1880).

Collateral References. Effect of failure to claim, power of tax collector as to. 99 A.L.R.
pay taxes because of unjustifiable refusal of tax 1068; 28 A.L.R.2d 1425.
collector to accept payment. 21 A.L.R.2d 1273. Unconstitutional statute or ordinance, per-
Prohibition to control action of tax collector. sonal liability of taxing officer for tax paid
115 A.L.R. 20; 159 A.L.R. 627. under. 48 A.L.R. 1395; 74 A.L.R. 1301.
Remission, release or compromise of tax Collection ⇔ 371.544-613.

TITLE 68
HEALTH, SAFETY AND ENVIRONMENTAL PROTECTION
HEALTH
CHAPTER 3
VITAL RECORDS

SECTION.

moving or disposing of fetus or
dead body.

PART 5—DEATHS

68-3-510. Records kept by persons releasing,

PART 5—DEATHS

68-3-510. Records kept by persons releasing, moving or disposing of fetus or dead body. — (a) When a dead body is released or disposed of by an institution, the person in charge of the institution shall keep a record showing the name of the deceased, date of death, name and address of the person to whom the body is released, date of removal from the institution, or if finally disposed of by the institution, the date, place and manner of disposition.

(b) A funeral director, embalmer or other person who removes from the place of death or transports or finally disposes of a dead body or fetus, in addition to filing any certificate or other report required by this chapter or regulations promulgated hereunder, shall keep a record which shall identify the body, and such information pertaining to this receipt, removal and delivery of the body as may be provided in regulations adopted by the department. [Acts 1977, ch. 128, § 26; T.C.A., § 53-479.]

Cross-References. Disposition of dead bodies, ch. 4 of this title.

Textbooks. Tennessee Law of Evidence (2nd ed., Cohen, Paine and Sheppeard), § 803(9).1.

Cited: Steinbrunner v. Turner Funeral Home, Inc., — S.W.3d —, 2001 Tenn. App. LEXIS 946 (Tenn. Ct. App. Jan. 2, 2001).

NOTES TO DECISIONS

1. Liability.

Compliance with T.C.A. § 68-3-510 is an administrative requirement and as such, violation of the statute cannot support a claim of

negligence per se. Steinbrunner v. Turner Funeral Home, Inc., — S.W.3d —, 2001 Tenn. App. LEXIS 946 (Tenn. Ct. App. Jan. 2, 2001).

RULES OF TENNESSEE BOARD OF FUNERAL DIRECTORS AND EMBALMERS

The rules contained in this publication were supplied to LexisNexis by the Division of Publications of the Office of Secretary of State.

Chapters

- 0660-1. Registration of Apprentices
- 0660-2. Examinations
- 0660-3. Fees
- 0660-4. Reports
- 0660-5. Burial Associations
- 0660-6. Funeral Industries Practices
- 0660-7. Rules of Procedure for Hearing Contested Cases
- 0660-8. Civil Penalties
- 0660-9. Requirements for a Crematory
- 0660-10. Continuing Education

ADMINISTRATIVE HISTORY

Original chapters 0660-1 through 0660-4 certified May 24, 1974, under Chapter 491 of the Public Acts of 1974 as rules in effect when Chapter 491 became effective. The Administrative History following each rule gives the date on which the rule was certified or the date on which the rule was filed and its effective date if promulgated after March 11, 1974. The Administrative History after each rule also shows the date of any amendments or repeals.

Chapter 0660-5 filed June 24, 1974; effective July 24, 1974.

Chapter 0660-6 filed January 28, 1975; effective April 28, 1975.

Amendment to rule 0660-5-.01 filed March 23, 1977; effective July 14, 1977.

Amendment to rule 0660-3-.01 filed June 14, 1977; effective July 14, 1977.

Original chapter 0660-7 filed November 22, 1978; effective January 8, 1979.

Repeal and new chapters 0660-1 through 0660-6 filed June 13, 1980; effective September 29, 1980.

Amendment to rule 0660-6-2-.01 filed February 20, 1985; effective March 22, 1985.

Repeal and new chapter 0660-6 filed February 20, 1985; effective March 22, 1985.

Amendments to rules 0660-2-.01, 0660-2-.02, 0660-3-.01, 0660-3-.02 and 0660-6-.03 filed December 12, 1985; effective January 11, 1986.

Amendments to rules 0660-1-.01 and 0660-1-.02 filed August 26, 1986; effective November 29, 1986.

Original chapter 0660-8 filed September 22, 1987; effective November 6, 1987.

Amendments to rules 0660-3-.01 through 0660-3-.03 filed August 31, 1989; effective October 15, 1989.

Original rules 0660-3-.04 through 0660-3-.06 filed August 31, 1989; effective October 15, 1989.

Amendment to rules 0660-1-.02, 0660-6-.01 and original chapter 0660-9 filed August 30, 1991; effective October 14, 1991.

Original rule 0660-10 filed May 28, 1999; effective August 11, 1999.

Amendment to rule 0660-4-.03 filed May 12, 2000; effective September 28, 2000.

Amendment to rules 0660-3-.01 through 0660-3-.04 and Original rules 0660-3-.07 through 0660-3-.10 filed April 4, 2002; effective June 18, 2002.

Amendment to rule 0660-10-.04 filed August 29, 2002; effective December 27, 2002.

CHAPTER 0660-1

REGISTRATION OF APPRENTICES

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0660-1-.01	Applicants for Funeral Director's License	0660-1-.02	Applicants for Embalmer's License
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0660-1-.01 APPLICANTS FOR FUNERAL DIRECTOR'S LICENSE.

Any applicant for a funeral director's license required by T.C.A. §62-5-305 to register as an apprentice with the Board of Funeral Directors and Embalmers shall complete the form furnished by the Board. The applicant must be at least sixteen (16) years of age, and must be working as a full-time employee (i.e., working at least 40 hours per week) under the personal supervision and instruction of a licensed funeral director in the State of Tennessee.

Authority: T.C.A. §§62-5-203 and 62-3-305. **Administrative History:** Original rule certified May 24, 1974. Repeal and new rule filed June 15, 1980; effective September 29, 1980. Amendment filed August 26, 1986; effective November 29, 1986.

0660-1-.02 APPLICANTS FOR EMBALMER'S LICENSE. Any applicant for an embalmer's license required by T.C.A. §62-5-307 to file a certificate of registration with the Board of Funeral Directors and Embalmers at the beginning of his apprenticeship must be at least sixteen (16) years of age, and must certify that he will be working full-time (i.e., working at least 40 hours per week) as a paid assistant in the preparation and care of dead human bodies under a licensed embalmer and funeral director having an established place of business in the State of Tennessee.

Authority: T.C.A. §§62-5-203 and 62-5-307. **Administrative History:** Original rule certified May 24, 1974. Repeal and new rule filed June 15, 1980; effective September 29, 1980. Amendment filed August 29, 1986; effective November 29, 1986. Amendment filed August 30, 1991; effective October 14, 1991.

CHAPTER 0660-2

EXAMINATIONS

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0660-2-.01	Examination Procedures
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0660-2-.01 EXAMINATION PROCEDURES.

- (1) Tennessee Board.
 - (a) Examination given by the Tennessee Board of Funeral Directors and Embalmers for the purpose of testing applicants for license to practice funeral directing or embalming shall be supervised by the Director of Regulatory Boards of the Department of Commerce and Insurance.
 - (b) All examinations shall be fairly and equitably administered, and no assistance shall be provided any examinee.
 - (c) At the end of each examination given by the Board, the papers shall be collected by the Director of Regulatory Boards, or his designee, and shall be mailed immediately to the private testing agency which prepared the examination for grading.
- (2) National Conference.
 - (a) In lieu of a funeral director examination given by the Board, the Board will accept the results of examinations (or parts thereof) covering Funeral Service Acts which are devised by the Conference of Funeral Service Examining Boards.
 - (b) In lieu of an embalmer examination given by the Board, the Board will accept the results of examinations (or parts thereof) covering Funeral Service Sciences which are devised by the Conference of Funeral Service Examining Boards.
 - (3) Each examination shall include, but not be limited to, questions relating to the laws and rules governing the practice (funeral directing or embalming) in which the applicant wishes to engage.

Authority: T.C.A. §§62-5-203, 62-5-204 and 62-5-301. **Administrative History:** Original rule certified May 24, 1974. Repealed and new rule filed June 13, 1980; effective September 29, 1980. Amendment filed February 20, 1985; effective March 22, 1985. Amendment filed December 12, 1985; effective January 11, 1986.

0660-2-.02 GRADING PROCEDURES.

- (1) Examinations will be graded by the private testing agency which prepared them. Such agency shall send the grades on examinations given by the Board directly to the Director of Regulatory Boards.
- (2) The Director shall immediately transmit a copy of the examination results to the Office of the Attorney General.
- (3) The examination results shall be presented to the Board of Funeral Directors and Embalmers by the Director of Regulatory Boards at the first meeting of the Board following receipt of the grades by the Director.
- (4) The passing grade for both funeral director and embalmer examinations shall be seventy-five (75%).
- (5) An examination may be regarded upon the examinee's written request, accompanied by payment of any cost incurred by the Board for providing such service.

Authority: T.C.A. §§62-5-203, 62-5-204 and 62-5-301. **Administrative History:** Original rule certified May 24, 1974. Repealed and new rule filed June 13, 1980; effective September 29, 1980. Amendment filed December 12, 1985; effective January 11, 1986.

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0660-3-.04	Renewals	0660-3-.09	Change of Location
0660-3-.05	Reciprocal Licenses	0660-3-.10	Database Update

0660-3-.01 STUDENT AND APPRENTICE REGISTRATION.

- (1) Funeral Director student or apprentice. The fee for registration as a funeral director student or apprentice shall be seventy dollars (\$70.00).
- (2) Embalmer student or apprentice. The fee for registration as an embalmer apprentice shall be seventy dollars (\$70.00).

Authority: T.C.A. §§62-5-203, 62-5-204, 62-5-207, 62-5-305(b), 62-5-307, and 62-5-307(d). **Administrative History:** Original rule was certified May 24, 1974. Amendment filed June 14, 1977; effective July 14, 1977. Repeal and new rule filed June 13, 1980; effective September 29, 1980. Amendment filed December 12, 1985; effective January 11, 1986. Amendment filed August 31, 1989; effective October 15, 1989. Amendment filed April 4, 2002; effective June 18, 2002.

0660-3-.02 APPLICANTS FOR LICENSES.

- (1) Funeral Director. An application for a funeral director's license shall be accompanied by a nonrefundable application fee of two hundred dollars (\$200.00).
- (2) Embalmer. An application for an embalmer's license shall be accompanied by a non-refundable application fee of two hundred dollars (\$200.00).
- (3) Funeral Establishment. An application for a funeral establishment license shall be accompanied by a non-refundable application/initial license fee of five hundred seventy-five dollars (\$575.00).

Authority: T.C.A. §§62-5-203, 62-5-204, 62-5-207, 62-5-304, 62-5-304(a), 62-5-305(a), 62-5-306(c), 62-5-307(a), 62-5-308(c), and 62-5-311. **Administrative History:** Original rule filed June 13, 1980; effective September 29, 1980. Amendment filed December 12, 1985; effective January 11, 1986. Amendment filed August 31, 1989; effective October 15, 1989. Amendment filed April 4, 2002; effective June 18, 2002.

0660-3-.03 LICENSES.

- (1) Funeral Director. The fee for a funeral director's license shall be two hundred seventy-five dollars (\$275.00).
- (2) Embalmer. The fee for an embalmer's license shall be two hundred seventy-five dollars (\$275.00).

Authority: T.C.A. §§62-5-203, 62-5-204, 62-5-207, 62-5-306(c), and 62-5-308(c). **Administrative History:** Original rule filed June 13, 1980; effective September 29, 1980.

ber 29, 1980. Amendment filed December 12, 1985; effective January 11, 1986. Amendment filed August 31, 1989; effective October 15, 1989. Amendment filed April 4, 2002; effective June 18, 2002.

0660-3-.04 RENEWALS.

- (1) Funeral Director. The fee for biennial renewal of a funeral director's license shall be two hundred seventy-five dollars (\$275.00). The penalty fee for late renewal shall be two hundred dollars (\$200.00).
- (2) Embalmer. The fee for biennial renewal of an embalmer's license shall be two hundred seventy-five dollars (\$275.00). The penalty fee for late renewal shall be two hundred dollars (\$200.00).
- (3) Funeral Establishment. The fee for biennial renewal of a funeral establishment license shall be five hundred seventy-five dollars (\$575.00). The penalty fee for late renewal shall be two hundred dollars (\$200.00).

Authority: T.C.A. §§62-5-203, 62-5-207, 62-5-315, and 62-5-316(b). **Administrative History:** Original rule filed August 31, 1989; effective October 15, 1989. Amendment filed April 4, 2002; effective June 18, 2002.

0660-3-.05 RECIPROCAL LICENSES.

- (1) An application for a reciprocal funeral director's or embalmer's license shall be accompanied by a nonrefundable application fee of two hundred dollars (\$200.00).
- (2) The fee for a reciprocal funeral director's or embalmer's license shall be one hundred dollars (\$100.00).

Authority: T.C.A. §§62-5-203 and 62-5-311. **Administrative History:** Original rule filed August 31, 1989; effective October 15, 1989.

0660-3-.06 DUPLICATES. The fee for a duplicate license shall be thirty dollars (\$30.00).

Authority: T.C.A. §§62-5-203 and 62-5-315(d). **Administrative History:** Original rule filed August 31, 1989; effective October 15, 1989.

0660-3-.07 REINSPECTIONS.

The fee for any reinspection of a licensed establishment, or of an establishment applying for a license, shall be two hundred dollars (\$200.00).

Authority: T.C.A. §§62-5-203, 62-5-207, and 62-5-304. **Administrative History:** Original rule filed April 4, 2002; effective June 18, 2002.

0660-3-.08 CHANGE OF OWNERSHIP.

Any person acquiring ownership of an existing licensed funeral establishment shall remit the same fee as that required for a funeral establishment by Rule 0660-3-.02(3), payable upon submission of the report required by Rule 0660-4-.03(2).

Authority: T.C.A. §§62-5-203, 62-5-207, and 62-5-315(c). **Administrative History:** Original rule filed April 4, 2002; effective June 18, 2002.

0660-3-.09 CHANGE OF LOCATION.

The fee for changing the location or place of business of any licensed establishment shall be five hundred seventy-five dollars (\$575.00), payable upon submission of the written notification required by Rule 0660-4-.03(1) of the Rules of the Board of Funeral Directors and Embalmers.

Authority: T.C.A. §§62-5-203 and 62-5-207. **Administrative History:** Original rule filed April 4, 2002; effective June 18, 2002.

0660-3-.10 DATABASE UPDATE.

The fee for changing any entry in the Board's computer database with regard to information required to be reported or submitted to the Board shall be sixty dollars (\$60.00) per request.

Authority: T.C.A. §§62-5-203 and 62-5-207. **Administrative History:** Original rule filed April 4, 2002; effective June 18, 2002.

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0660-4-.01 MULTIPLE BUSINESS ESTABLISHMENTS. Every person, firm, partnership, or corporation operating multiple business establishments shall designate, in writing, to the Board of Funeral Directors and Embalmers the name and address of each and every licensed funeral director in its employ, and the address of the place of business under his direction and supervision.

Authority: T.C.A., §62-504. **Administrative History:** Original Rule was certified May 24, 1974. Repealed and New Rule filed June 13, 1980; effective September 29, 1980.

0660-4-.02 BRANCHES. Every person, firm, partnership, or corporation desiring to open and operate a separate establishment or place of business concerned with the management of funerals shall, prior to such opening and operation, advise the Board of Funeral Directors and Embalmers in writing of the address of the licensed funeral director assigned to this separate establishment.

Authority: T.C.A., §62-504. **Administrative History:** Original Rule filed June 13, 1980; effective September 29, 1980.

0660-4-.03 CHANGES.

- (1) The Board of Funeral Directors and Embalmers shall be notified in writing within ten days of the effective date of any change in:
 - (a) the location, address, or number of separate places of business operated by the holder of a funeral establishment license;
 - (b) the identity of the licensed funeral director in charge of a place of business; and

- (c) the address of the holder of any license issued by the Board.
- (2) Upon a change of ownership of any licensed funeral establishment, the new owner(s) shall, in addition to complying with subsection (1) of this rule, appear before the Board within sixty (60) days of the change of ownership in order to request a new license for the establishment; provided that where the ownership of a licensed funeral home changes by reason of the death of the previous owner and the ownership of the establishment is contested in probate proceedings, the new owner(s) need not appear until sixty (60) days after the entry of the order adjudicating such license.
- (3) The Board of Funeral Directors and Embalmers shall have the power to punish violations of this rule by assessing a civil penalty against the new owner(s) in an amount not to exceed one thousand dollars (\$1,000) for each separate violation. Each day a violation continues constitutes a separate violation. In determining the amount of any civil penalty to be assessed pursuant to this rule, the Board may consider such factors as the following:
 - (a) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (b) The circumstances of the violation;
 - (c) The seriousness of the violation and the risk of harm to the public;
 - (d) Any economic advantage gained by the violator as a result of non-compliance; and
 - (e) The interest of the public.

Authority: T.C.A., §62-5-203 and 56-1-308. **Administrative History:** Original Rule filed June 13, 1980; effective September 29, 1980. Amendment filed May 12, 2000; effective September 28, 2000.

CHAPTER 0660-5

BURIAL ASSOCIATIONS

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0660-5-.01	Definition of Burial Association
0660-5-.02	Business Ethics
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0660-5-.01 DEFINITION OF BURIAL ASSOCIATION. For the purpose of this Chapter, a “burial association” shall be defined as a voluntary association, charitable and benevolent in nature, which provides death benefits to members by means of an assessment of all of the members.

Authority: T.C.A., §62-504. **Administrative History:** Original Rule was filed June 24, 1974; effective July 24, 1974. Amended: filed March 23, 1977; effective April 22, 1977. Repealed and new Rule filed June 13, 1980; effective September 29, 1980.

0660-5-.02 BUSINESS ETHICS. If any person or entity subject to the supervision of the Board of Funeral Directors and Embalmers directly or indirectly engages in the establishment, management, operation, or control of

a burial association (a) for personal profit or benefit, or (b) in any manner which is contrary to applicable state statutes or rules, such person or entity shall be deemed by the Board to be guilty of unprofessional conduct; provided, however, that necessary and incidental expenses of operating the burial association may be included in the death benefit assessment without being considered profit to the association.

Authority: T.C.A., §62-504. **Administrative History:** Original Rule filed June 13, 1980; effective September 29, 1980.

0660-5-.03 CAUSE OF AN INVESTIGATION. If any person or entity subject to the supervision of the Board issues certificates for membership in a burial association directly or indirectly in violation of applicable state statutes or rules, it will be presumed that the association is being operated for personal profit of the person or entity; and the Board will cause an investigation to be made to determine whether there is subterfuge resulting in unprofessional conduct of such gravity as to warrant revocation or suspension of the license.

Authority: T.C.A., §62-504. **Administrative History:** Original Rule filed June 13, 1980; effective September 29, 1980.

CHAPTER 0660-6

FUNERAL INDUSTRY PRACTICES

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0660-6-.01	Unlicensed Assistants	0660-6-.03	Records
0660-6-.02	Federal Trade Commission Rules	0660-6-.04	Cash Advance Items
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0660-6-.01 UNLICENSED ASSISTANTS.

- (1) An unlicensed assistant may only perform the duties of a funeral director as defined in T.C.A. §62-5-101(3)(A) in accordance with the provisions of T.C.A. §62-5-313.
- (2) For the purpose of this chapter, the phrase “under the direction and supervision of all licensed funeral director” contained in T.C.A. §62-5-313 shall mean that the presence of said licensee is required for the unlicensed assistant to act in the following critical areas.
 - (a) Provision of information regarding, and negotiation of arrangements for, the provision of funeral services and/or merchandise and execution of agreements providing thereof, whether these acts occur before or after death of the named beneficiary, and
 - (b) Coordination and conduct of public post-death rites and ceremonies and/or subsequent final disposition of human remains, regardless of the method of disposition chosen.
- (3) No licensee shall affix or allow to be affixed his/her signature or license number to any contract, agreement, plan, or memorandum regarding provision of funeral services and/or merchandise, whether such document is executed before or after death of the beneficiary named therein,

- unless said licensee has personally handled all consultation regarding, and consummation of, said agreement, contract, plan or memorandum.
- (4) Any licensee permitting an unlicensed person to negotiate, consummate, execute, or fulfill a contract, agreement, plan, or memorandum, or series thereof, which document provided for delivery of funeral services and/or funeral merchandise, whether such action occurs before or after death of the beneficiary therein named shall be deemed guilty of unprofessional conduct and aiding and abetting an unlicensed person in the practice of funeral directing unless said licensee has been in the presence of both the buyer and the unlicensed assistant throughout the entire process of interaction between the buyer and the unlicensed assistant which culminates in said contract, agreement, plan, memorandum, or series or combination thereof.

Authority: T.C.A. §§62-5-101, 62-5-203 and 62-5-313. **Administrative History:** Original rule filed January 28, 1975; effective April 28, 1975. Repealed and new rule filed June 13, 1980; effective September 29, 1980. Repealed and new rule filed February 20, 1985; effective March 22, 1985. Amendment to rule filed August 30, 1991; effective October 14, 1991.

0660-6-.02 FEDERAL TRADE COMMISSION RULES.

- (1) No funeral director, embalmer, or funeral establishment shall:
- (a) engage in any unfair or deceptive acts or practices defined in Title 16, *Code of Federal Regulations*, Part 453; or
 - (b) fail to comply with any preventive requirements specified in Title 16, *Code of Federal Regulations*, Part 453.

Authority: T.C.A. §62-5-203. **Administrative History:** Original rule filed January 28, 1975; effective April 28, 1975. Repealed and new rule filed June 13, 1980; effective September 29, 1980. Repealed and new rule filed February 20, 1985; effective March 22, 1985.

0660-6-.03 RECORDS. All records subject to inspection by Federal Trade Commission officials as provided in 16 CFR §453.6 shall be made available to the Board of Funeral Directors and Embalmers (or its authorized representatives) under the same terms prescribed therein.

Authority: T.C.A. §62-5-203. **Administrative History:** Original rule filed January 28, 1975; effective April 28, 1975. Repealed and new rule filed June 13, 1980; effective September 29, 1980. Repealed and new rule filed February 20, 1985; effective March 22, 1985.

0660-6-.04 CASH ADVANCE ITEMS. The amount charged for any “cash advance item” (as defined in 16 CFR 453.1 (c)) shall not exceed the amount paid for such item by the funeral establishment; except, however, that the establishment shall not be required to pass on the customer any discount which is openly and regularly made available to the establishment, if such establishment discloses to the customer the fact that it does or may receive such discount.

Authority: T.C.A. §62-5-203. **Administrative History:** Original rule filed January 28, 1975; effective April 28, 1975. Repealed and new rule filed June 13, 1980; effective September 29, 1980. Repealed and new rule filed February 20, 1985; effective March 22, 1985.

0660-6-.05 VIOLATIONS. Any violation of the provisions of this chapter by a funeral director, embalmer, or funeral establishment may constitute grounds for disciplinary action by the Board under T.C.A. §§62-5-317 (a) (4), 62-5-317 (b) (1), and/or 62-5-317 (b) (2).

Authority: T.C.A. §62-5-203. **Administrative History:** Original rule filed January 28, 1975; effective April 28, 1975. Repealed and new rule filed June 13, 1980; effective September 29, 1980. Repealed and new rule filed February 20, 1985; effective March 22, 1985.

CHAPTER 0660-7

RULES OF PROCEDURE FOR HEARING CONTESTED CASES

For Rules of Procedure for Hearing Contested Cases see Rules of the Secretary of State, Chapter 1360-1-7.

Authority: T.C.A. Section 4-509. **Administrative History:** Original Chapter filed November 22, 1978, effective January 8, 1979.

CHAPTER 0660-8

CIVIL PENALTIES

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0660-8-.01 Civil Penalties

0660-8-.01 CIVIL PENALTIES.

- (1) With respect to any person, partnership, firm, association or corporation required to be licensed by the Board, the Board may, in addition to or in lieu of any other lawful disciplinary action, assess civil penalties against such person for each separate violation of a statute, rule or order pertaining to the Board in accordance with the following schedule:

Violation	Penalty
T.C.A. §62-5-317(a) 1.	Not more than \$1,000 Nor less than \$ 200
2.	Not more than \$1,000 Nor less than \$ 25
3.	Not more than \$1,000 Nor less than 25
4.	Not more than \$1,000 Nor less than 25
5.	Not more than \$1,000 Nor less than 200

- | | | |
|---------------------|-----|-----------------------------------------------|
| | 6. | Not more than \$1,000
Nor less than 10 |
| | 7. | Not more than \$1,000
Nor less than 25 |
| | 8. | Not more than \$1,000
Nor less than 300 |
| | 9. | Not more than \$1,000
Nor less than 25 |
| T.C.A. §62-5-317(b) | 1. | Not more than \$1,000
Nor less than 300 |
| | 2. | Not more than \$1,000
Nor less than 100 |
| | 3. | Not more than \$1,000
Nor less than \$ 300 |
| | 4. | Not more than \$1,000
Nor less than \$ 300 |
| | 5. | Not more than \$1,000
Nor less than \$ 300 |
| | 6. | Not more than \$1,000
Nor less than \$ 200 |
| | 7. | Not more than \$1,000
Nor less than \$ 25 |
| | 8. | Not more than \$1,000
Nor less than \$ 300 |
| | 9. | Not more than \$1,000
Nor less than \$ 25 |
| | 10. | Not more than \$1,000
Nor less than \$ 200 |
| | 11. | Not more than \$1,000
Nor less than \$ 25 |
| | 12. | Not more than \$1,000
Nor less than \$ 25 |
| | 13. | Not more than \$1,000
Nor less than \$ 25 |
| | 14. | Not more than \$1,000
Nor less than \$ 25 |
- (2) Each day of continued violation shall constitute a separate violation.
- (3) In determining the amount of civil penalty to be assessed pursuant to this rule, the Board may consider such factors as the following.
- (a) Whether the amount imposed will be substantial economic deterrent to the violator;
 - (b) The circumstances leading to the violation;
 - (c) The severity of the violation and the risk of harm to the public;
 - (d) The economic benefits gained by the violator as a result of non-compliance; and
 - (e) The interest to the public.

Authority: T.C.A. §§62-5-203 and 56-1-308. **Administrative History:** Original rule filed September 22, 1987; effective November 6, 1987. Amendment filed August 30, 1991; effective October 14, 1991.

CHAPTER 0660-9

REQUIREMENTS FOR A CREMATORY

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0660-9-.01 Requirements for a Crematory

0660-9-.01 REQUIREMENTS FOR A CREMATORY.

- (1) No person, partnership, firm, association or corporation shall conduct, maintain, manage or operate a crematory facility unless a license as a funeral establishment for such facility has been issued by the Board of Funeral Directors and Embalmers.
- (2) Application for licensure of crematory facility shall be on a form furnished and prescribed by the Board of Funeral Directors and Embalmers and shall be accompanied by an application fee set by the Board for funeral establishment. No license shall be issued unless the crematory facility has been inspected and approved as meeting all requirements as set forth by the Board, the Department of Health, Department of Environmental regulation or any local ordinance regulating the same.
- (3) No more than one(1) dead human body shall be placed in a retort at one (1) time, unless written permission has been received from the personal representative for each body.
- (4) No more than one cremated remains may be placed in any container, unless written permission has been received from the personal representative responsible for the remains.
- (5) Cremated remains may not be commingled for storage or disposition. Each individual cremated remains must be kept separate and properly identified on the container, unless otherwise authorized by personal representatives.
- (6) That the entire cremated remains be returned to the family and/or responsible party.
- (7) All cremations of human remains in this state be arranged through the holder of a valid, current funeral establishment license issued by the Board and supervised by a licensed funeral director, to include placement of cremated remains in container.
- (8) Each crematory shall submit its cremation authorization form to the Board for approval, prior to using said form.
- (9) Acceptance of a license issued by the Board gives a Board representative the right to inspect the crematory and the records of the crematory at any time.

Authority: T.C.A. §§62-5-203, 62-5-101 and 62-5-309. **Administrative History:** Original rule filed August 30, 1991; effective October 14, 1991.

CHAPTER 0660-10

CONTINUING EDUCATION

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0660-10-.02	Definitions	0660-10-.06	Withdrawal of Approval
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0660-10-.04	Qualifying Continuing Educa- tion Programs	0660-10-.08	Failure to Obtain Required Con- tinuing Education
		0660-10-.09	Reciprocity

0660-10-.01 PURPOSE. The Tennessee State Board of Funeral Directors and Embalmers is authorized by T.C.A. §62-5-203 to establish continuing education requirements and standards for funeral directors and embalmers. The purposes of this chapter are to prescribe the basic continuing education requirements for present and future funeral directors and embalmers and to establish standards by which continuing education programs will be evaluated for the awarding of credit for participation in such programs or other continuing education activities.

Authority: T.C.A. §§62-5-203 and 62-5-601. **Administrative History:** Original rule filed May 28, 1999; effective August 11, 1999.

0660-10-.02 DEFINITIONS.

- (1) “Board” means the Tennessee State Board of Funeral Directors and Embalmers;
- (2) “Licensee” means any person who holds a license issued by the Tennessee State Board of Funeral Directors and Embalmers;
- (3) “Licensing period” means the period of time that a funeral director’s or embalmer’s license is in effect in Tennessee;
- (4) “Sponsor” means any person, organization, association, company, institution, or other entity who wishes to develop and present a continuing education program.

Authority: T.C.A. §62-5-203. **Administrative History:** Original rule filed May 28, 1999; effective August 11, 1999.

0660-10-.03 CONTINUING EDUCATION REQUIREMENTS.

- (1) As a prerequisite to license renewal, each licensee shall submit with the license renewal application satisfactory proof of having completed a minimum of ten (10) hours of continuing education coursework during the licensing period. All coursework must be approved by the Board for credit to be awarded.
- (2) Continuing education credit may be obtained by licensees through attendance at only those continuing education courses which have been approved by the Board.
- (3) Licensees may not carry-over continuing education hours from one licensing period to the next.
- (4) The requirements of this chapter do not apply to new licensees during the first licensing period.

Authority: T.C.A. §§62-5-203, 62-5-601(c), 62-5-601(e), 62-5-601(f), and 62-5-601(g). **Administrative History:** Original rule filed May 28, 1999; effective August 11, 1999.

0660-10-.04 QUALIFYING CONTINUING EDUCATION PROGRAMS.

- (1) In order to qualify for credit toward satisfaction of the requirements of rule 0660-10-.03, a continuing education program must be a structured program which contributes directly to the professional competence of the licensee.
- (2) Programs may be considered by the Board for the award of continuing education credit and qualified for approval if:
 - (a) An outline is prepared by the sponsor and preserved;
 - (b) The content of each presentation is well organized and presented in a sequential manner;
 - (c) The program is at least one (1) hour (1 credit hour = 50 minutes) in length;
 - (d) A record of registration of attendance is maintained by the sponsor;
 - (e) The program contributes directly to the advancement and extension of professional knowledge and skill in the practice of funeral science;
 - (f) The program is conducted by individuals considered experts in the subject matter of the program by reason of their education, training or experience;
 - (g) The program is available to all funeral directors and embalmers licensed in this state; and
 - (h) The program addresses one or more of the following subjects: ethics, communications, sociology, psychology, funeral directing, business law, business management, funeral service law, funeral merchandising, accounting, embalming, restorative arts, cremation, microbiology, pathology, chemistry, anatomy or any other subject approved by the Board.
- (3)
 - (a) Program sponsors shall submit a program schedule and outline to the Board, which must be received by the Board not less than sixty (60) days prior to the date of the program. Such schedule and outline shall include the following information:
 1. The name of the course;
 2. The name of the sponsoring organization;
 3. The objectives of the program;
 4. The length (in hours) of the program and the date(s) on which the program will be presented;
 5. The names, educational backgrounds and relevant qualifications of all instructors or speakers participating in the program;
 6. The location(s) at which the program will be presented; and
 7. The name and address of the person authorized by the sponsor to certify attendance.
 - (b) The Board may grant leave to amend a program schedule and outline upon receipt of a proper application therefor. Such application must be submitted pursuant to paragraph (3)(a) of this rule, and must be received by the Board not less than thirty (30) days prior to the date

of the program. Such amendment shall identify the program to which it refers and shall contain a description of the purpose and substance of the amendment. In evaluating any such application for amendment, the Board may consider:

1. The occurrence of any material change of law or fact after the submission of the original program schedule that affects the subject matter of the program;
 2. The desirability of adding any particular speaker or means of instruction which had been unavailable at the time the original program schedule was submitted;
 3. The inability of a scheduled speaker to participate due to reasons unforeseen at the time of the submission of the original program schedule; or
 4. Any other reason not foreseeable at the time of the submission of the original program schedule which would result in undue hardship to sponsors, producers, customers or other participants unless the program were amended.
- (4) (a) Upon receipt of a program schedule and outline as required by this rule, the Board shall notify the program sponsor of approval or disapproval of the program no less than thirty (30) days prior to the scheduled date of the program. Any notice of disapproval shall state the reason(s) therefor.
- (b) Upon receipt of any proposed amendment to a program schedule and outline submitted in accordance with this rule, the Board shall notify the program sponsor of approval or disapproval no less than ten (10) days prior to the scheduled date of the program. Any notice of disapproval shall state the reason(s) therefor.
- (5) Subject to compliance with paragraphs (1), (2), and (3) of this rule, continuing education hours for credit may be obtained in programs offered in the following formats:
- (a) Cassette and audiovisual presentations;
 - (b) Professional seminars;
 - (c) Courses at accredited mortuary schools;
 - (d) Programs sponsored by professional associations and organizations recognized by the Board;
 - (e) Correspondence courses which require an examination;
 - (f) Continuing education television or video series; or
 - (g) Other program formats approved by the Board.
- (6) Sponsors of continuing education programs shall be responsible for obtaining from the Board approval for their respective continuing education programs prior to the dates on which such programs are to be presented.
- (7) Continuing education credit allowed under T.C.A. §62-5-604 for service by a licensee as an instructor, discussion leader, or speaker will not be allowed for repeated presentations by the licensee unless the presentation has been substantially revised.
- (8) The Board may maintain a list of sponsors providing programs which satisfy the continuing education requirements for licensees. This information may be made available to any licensee upon request.

Authority: T.C.A. §§62-5-203, 62-5-603, 62-5-604, 62-5-605, and 62-5-606.

Administrative History: Original rule filed May 28, 1999; effective August 11, 1999. Amendment filed August 29, 2002; effective December 27, 2002.

0660-10-.05 DUTIES OF PROGRAM SPONSORS.

- (1) The sponsor shall keep detailed records of each continuing education program. The records to be maintained shall include:
 - (a) The date and location of the program presented;
 - (b) The name and qualifications of each instructor or presenter;
 - (c) A registration form showing the printed names, signatures and license numbers for all licensees in attendance; and
 - (d) A written outline of the program agenda.
- (2) Approval of any continuing education program may be withdrawn by the Board if the sponsor of such program fails to comply with the provisions of this chapter.
- (3) Each licensee shall, when making application for license renewal, submit on a form prescribed by the Board a signed statement setting forth the continuing education programs in which the licensee has participated during the licensing period. Such licensee shall retain documentation supporting such statement for a period of three (3) years subsequent to the date of submission.
- (4) If any continuing education hours claimed in a statement submitted by a licensee pursuant to paragraph (3) of this rule are disapproved, the Board shall notify such licensee of the reason for such disapproval. The Board may allow a period of time not to exceed one hundred eighty (180) days for the correction of any deficiencies.
- (5) Within thirty (30) days of the conclusion of a continuing education program, the sponsor shall submit to the Board documentation identifying the program and listing the attending licensees. Failure to comply with this requirement may result in the Board's disallowance of credit for such program.

Authority: T.C.A. §§62-5-203, 62-5-605(3), 62-5-609, and 62-5-611. **Administrative History:** Original rule filed May 28, 1999; effective August 11, 1999.

0660-10-.06 WITHDRAWAL OF APPROVAL.

- (1) Any changes made to a program by the sponsor after approval is granted must be approved by the Board. Failure of the sponsor to obtain approval of changes in a program shall be grounds for withdrawal of approval of the program by the Board.
- (2) Approval of any continuing education program may be withdrawn by the Board if the program fails to comply with the relevant statutes or the provisions of this chapter.

Authority: T.C.A. §§62-5-203 and 62-5-611. **Administrative History:** Original rule filed May 28, 1999; effective August 11, 1999.

0660-10-.07 EXTENSIONS OF TIME.

- (1) The Board may, upon written request by the licensee, extend for reasonable and just cause, the time within which the licensee must comply with the requirements of this chapter.

- (2) Any licensee who is granted an extension of time under this rule shall remain subject to the provisions of this chapter and shall note such extension on any report or correspondence thereafter submitted until such time as the extension expires or until the licensee meets the continuing education requirements for license renewal.
- (3) Any request for an extension of time shall be submitted for consideration by the full Board.

Authority: T.C.A. §§62-5-203 and 62-5-601. **Administrative History:** Original rule filed May 28, 1999; effective August 11, 1999.

0660-10-.08 FAILURE TO OBTAIN REQUIRED CONTINUING EDUCATION.

- (1) A licensee who is not granted an extension and who fails to obtain the required number of continuing education hours prior to the expiration date appearing on the license shall be denied renewal until the Board receives documentation that the licensee has obtained the required continuing education.
- (2) A licensee who is not granted an extension and who fails to obtain the required number of continuing education hours prior to the expiration date appearing on the license shall not engage in any activity which requires a license until or unless the Board renews the license after the licensee demonstrates that all requirements for renewal, including the continuing education requirements and payment of all applicable late fees, have been met.

Authority: T.C.A. §§62-5-203, 62-5-601(c), and 62-5-610. **Administrative History:** Original rule filed May 28, 1999; effective August 11, 1999.

0660-10-.09 RECIPROCITY. The Board may recognize for continuing education credit attendance by licensees at continuing education programs in other states so long as the program is recognized and approved by the appropriate governmental agency of that state. Licensees claiming credit for attendance at continuing education programs in other states shall comply with all reporting requirements of this chapter.

Authority: T.C.A. §§62-5-203 and 62-5-602. **Administrative History:** Original rule filed May 28, 1999; effective August 11, 1999.

**RULES
OF
THE DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF REGULATORY BOARDS
BURIAL SERVICE SECTION**

CHAPTER 0780-5-9

CEMETERIES

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0780-5-9-.01 APPLICABILITY. All duties incurred by a cemetery owner under this Chapter apply with regard to each and every cemetery possessed by such owner in the State of Tennessee.

Authority: T.C.A. §§46-1-101 and 46-1-108(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-9-.02 DEFINITIONS. All definitions contained in Tenn. Code Ann. §46-1-102 apply equally to the rules of this chapter, with the following additions and exceptions:

- (1) "Cemetery owner" means any individual, association, partnership, corporation, limited liability company or other legally cognizable entity that owns or controls cemetery lands or property and conducts the business of a cemetery.
- (2) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance or the Commissioner's designee.
- (3) "Consumer price index" means the consumer price index (all urban consumers (CPI-U), United States city average), all items (not seasonally adjusted), as published by the United States Department of Labor, Bureau of Labor Statistics.
- (4) "Memorial care" includes, but is not limited to, resetting or straightening tipped commodities, replacing damaged commodities, and providing for the general maintenance of commodities. "Memorial care" does not

include the removal of the patina from copper, bronze, or other copper alloy commodities nor does "Memorial care" include the removal from any commodities of any discoloration resulting from natural or environmental causes.

- (5) "Person" means, according to the context, any individual, association, partnership, corporation, or any other legally cognizable organization or entity.

Authority: T.C.A. §§46-1-102 and 46-1-108(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-9-.03 CONSUMER PRICE INDEX ADJUSTMENT FOR INSTALLATION OF COMMODITIES FEE.

- (1) A cemetery owner shall be permitted to prohibit the installation of a commodity by noncemetery personnel; provided, that the fee charged by the cemetery owner for installation of such commodity does not exceed ten cents (\$0.10) per square inch of the ground covered by such commodity. As of the end of each calendar year commencing with the year ending December 31, 1981, the cemetery owner shall be permitted to increase the fee for installation of commodities by no more than the percentage representing the consumer price index as of the end of such calendar year. The charge for installation of a commodity by the cemetery owner shall be the same to all, regardless of the source of the commodity.
- (2) If the installation of an erect or flat marker requires the use of a base, the installation fee shall be calculated upon the ground covered by the base only.
- (3) If the fee charged by a cemetery owner for installation of a commodity exceeds the fee scale described in paragraph (1) of this rule, then the cemetery owner shall permit installation of the commodity by noncemetery personnel if requested by the lot owner, or the owner's representative, agent, or heirs or assigns.
- (4) The following method shall be used in calculating the annual consumer price index adjustment to the commodity installation fee:
 - (a) In all cases, the consumer price index to be used shall be the "Consumer Price Index-All Urban Consumers (CPI-U), U. S. City Average, All Items, Not Seasonally Adjusted", as published by the Bureau of Labor Statistics, U. S. Department of Labor.
 - (b) Beginning with the December 31, 1981 calculation, the annual calculations shall use the CPI-U table contained in Rule 0780-5-9-.05, with the base period of 1967=100. The initial fee of \$0.10 shall be multiplied by the percentage change from the 1980 annual average to the 1981 annual average. That product shall be added to the initial fee of ten cents (\$0.10) to obtain the fee for 1982. Each subsequent year's calculation shall employ the same method, regardless of the base period of the table then in use. Calculations shall always be rounded to the nearest tenth of a cent or the nearest tenth of a percent.
 1. The 1980 annual average was 246.8%.

2. The 1981 annual average was 272.4%.
3. The percentage change from 1980 to 1981 is 10.4%. The percentage change is calculated as:

$$(\text{new percent} - \text{old percent}) / \text{old percent}.$$
4. The fee of ten cents (\$0.10) is multiplied by 10.4%, resulting in a product of \$0.01.
5. The fee for 1982 is the sum of \$0.10 + \$0.01 or \$0.11.
6. The next year's calculation will be:

$$((1982 \text{ average} - 1981 \text{ average}) / 1981 \text{ average})(\$0.11) + \$0.11$$

or

$$((289.1 - 272.4) / 272.4)(\$0.11) + \$0.11 = (.061)(\$0.11) + \$0.11 =$$

$$\$0.007 + \$0.11 = \$0.117 \text{ fee for 1983.}$$
- (c) Beginning with the December 31, 1988 calculation, the annual calculations shall use the CPI-U table contained in Rule 0780-5-9-.05, with the base period of 1982-84=100. The values for both the 1988 annual average and the 1987 annual average shall come from this table.

Authority: T.C.A. §§46-1-103(b)(2) and (3) and 46-1-108(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-9-.04 CONSUMER PRICE INDEX ADJUSTMENT FOR MEMORIAL CARE FEE.

- (1) Every cemetery owner shall be permitted to charge a fee for the memorial care of every commodity installed in the cemetery. Such fee shall not exceed ten cents (\$0.10) per square inch of the ground covered by the commodity. As of the end of each calendar year commencing with the year ending December 31, 1981, the cemetery owner shall be permitted to increase the fee for the memorial care of commodities by no more than the percentage representing the consumer price index as of the end of such calendar year. The fee charged for memorial care of a commodity shall not exceed the fee charged by the cemetery owner for installation of the commodity. The charge for memorial care of a commodity shall be the same to all regardless of the source of the commodity.
- (2) The memorial care fee for an erect or flat marker which requires the use of a base shall be calculated upon the ground covered by the base only.
- (3) The method of calculating the annual consumer price index adjustment to the memorial care fee shall be the same as the method described in paragraph (4) of Rule 0780-5-9-.03.

Authority: T.C.A. §§46-1-108(a) and (b) and 46-2-302(c). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-9-.05 BUREAU OF LABOR STATISTICS CPI-U ANNUAL AVERAGES. The Bureau of Labor Statistics CPI-U annual averages can be accessed at the web site <http://stats.bls.gov/cpi>. The following tables contain the annual averages and percentage changes in annual averages for computation of consumer price index adjustments to the installation and memorial care fees:

Base Period 1967 = 100

Year	Annual Average	Percentage Change in Annual Average
1980	246.8	
1981	272.4	10.4%
1982	289.1	6.1%
1983	298.4	3.2%
1984	311.1	4.3%
1985	322.2	3.6%
1986	328.4	1.9%
1987	340.4	3.7%

Base Period 1982-84 = 100

1987	113.6	
1988	118.3	4.1%
1989	124.0	4.8%
1990	130.7	5.4%
1991	136.2	4.2%
1992	140.3	3.0%
1993	144.5	3.0%
1994	148.2	2.6%
1995	152.4	2.8%
1996	156.9	3.0%
1997	160.5	2.3%
1998	163.0	1.6%
1999	166.6	2.2%
2000	172.2	3.4%
2001	177.1	2.8%

Authority: T.C.A. §§46-1-108(a) and (b), 46-2-302(c), and 46-3-103(b)(2) and (3). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-9-.06 MEMORIAL CARE REQUIRED. A cemetery owner is required to provide memorial care whether or not the cemetery owner charges a memorial care fee; provided, that nothing in these rules shall require a cemetery owner to replace a commodity obtained from an outside source. Memorial care is to be considered improvement care within the meaning of Tenn. Code Ann. § 46-1-102(11) and Rule 0780-5-9-.02(3), and improvement care is an obligation of the cemetery owner to be paid for from the improvement care fund.

Authority: T.C.A. §§46-1-102(11) and (16), 46-1-108(a) and (b), and 46-2-302(c). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-9-.07 SIGN REQUIRED AT CEMETERY. Each cemetery owner shall conspicuously post a sign either within one hundred (100) feet of the main

public entrance to the cemetery grounds or outside the cemetery office (if the office is on the cemetery grounds). In the case of a sign near the public entrance, the lettering shall be not less than two (2) inches in height. In the case of a sign outside the cemetery office, the lettering shall be not less than one (1) inch in height. All such signs, regardless of where located, shall contain the words:

This cemetery is registered by the Tennessee Department of Commerce and Insurance.

Authority: T.C.A. §46-1-108(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-9-.08 REGISTRATION, RENEWAL AND REINSTATEMENT.

- (1) Every cemetery owner shall apply for a certificate of registration for each cemetery that owner possesses or controls. Upon approval of the application and receipt of a nonrefundable filing fee of three hundred dollars (\$300.00), the Commissioner shall issue a certificate of registration to the applicant.
- (2) Renewal of a certificate of registration may be effected at any time during the two (2) months preceding the date of expiration, upon submission of an application to the Commissioner on the prescribed form, accompanied by a renewal fee of three hundred dollars (\$300.00).
- (3) A certificate of registration becomes invalid if not renewed by the expiration date. After a certificate of registration has expired and has become invalid, a cemetery shall only be permitted to fulfill its preneed obligations for burials, to perform at need burials, and to perform basic maintenance of the cemetery property until the late renewal or reinstatement of the certificate of registration is effected.
- (4) The fee for late renewal of a certificate of registration shall be the renewal fee in paragraph (2) of this rule plus one hundred fifty dollars (\$150.00) for each month or fraction thereof the payment for renewal is late. No renewal application shall be accepted later than nine (9) months after the expiration date of a certificate of registration.
- (5) After the expiration of the nine (9)-month period in paragraph (4) of this rule, a certificate of registration may, upon proper application to the Commissioner, be reinstated. The fee for reinstatement of a nonrenewed certificate of registration shall be two thousand dollars (\$2,000.00).

Authority: T.C.A. §§46-1-103, 46-1-104, 46-1-107, and 46-1-108(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-9-.09 CHANGE OF OWNERSHIP.

- (1) No later than thirty (30) days before the scheduled closing date of any proposed sale of a cemetery, the buyer shall submit to the Commissioner an application for registration accompanied by a nonrefundable filing fee of three hundred dollars (\$300.00).
- (2) No certificate of registration shall be issued to the buyer unless and until the buyer's obligations under Tenn.Code Ann. § 46-1-107, if any, have been satisfied.

- (3) When the owner is a corporation, partnership, or other legal entity consisting of two or more persons, a change of ownership occurs when there is a change in controlling interest among the partners, managers or shareholders.

Authority: T.C.A. §§46-1-103, 46-1-104 , 46-1-107 and 46-1-108(a) and (b).

Administrative History: Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-9-.10 EXAMINATIONS AND AUDITS.

- (1) The necessary expense of any examination or audit made pursuant to Tenn. Code Ann. Title 46, Chapter 2, Part 2 shall be paid by the cemetery owner at the rate of three hundred dollars (\$300.00) per examiner/auditor, per day. The cemetery owner shall be billed in increments of not less than one-half day for each half-day or any portion thereof.
- (2) The necessary expense of any examination or audit made pursuant to Tenn. Code Ann. Title 46, Chapter 2, Part 4 shall be paid by the cemetery owner at the rate of three hundred dollars (\$300.00) per examiner/auditor, per day. The cemetery owner shall be billed in increments of not less than one-half day for each half-day or any portion thereof.
- (3) The cemetery owner shall remit payment not later than sixty (60) days after the invoice date.

Authority: T.C.A. §§46-1-108(a) and (b), 46-2-205(b), and 46-2-410(e) and (f).

Administrative History: Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-9-.11 GRANTING OF EXEMPTION FOR COMMUNITY CEMETERIES. The Commissioner has the discretion to grant an exemption from the registration requirements of this chapter to a community cemetery after taking into consideration the intent of Tenn. Code Ann. Title 46, Chapter 1 and factors including, but not limited to, the following:

- (1) the age of the cemetery;
- (2) the remaining area for future use;
- (3) the sale of lots over the preceding ten (10) years and the price at which sold;
- (4) the population of the community normally served by the cemetery;
- (5) whether a community cemetery association has been formed and such association has been incorporated or has been granted tax exempt status;
- (6) the historic nature of the cemetery and/or its environs;
- (7) whether a trust fund has been established for the maintenance and upkeep of the cemetery; and
- (8) the source or sources of funds used for the maintenance and upkeep of the cemetery.

Authority: T.C.A. §§46-1-106(b) and 46-1-108(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-9-.12 REQUEST FOR EXEMPTION FOR COMMUNITY CEMETERIES. The request for the granting of an exemption for a community cemetery shall be submitted in typewritten form on 8 ½" x 11" paper by a person in responsible charge of the cemetery and shall contain the following information:

- (1) the name and address of the cemetery, or the description of its location if it has no street address;
- (2) the name, address, and telephone number of the person in responsible charge of the cemetery who is submitting the application on behalf of the cemetery;
- (3) a statement as to whether a cemetery association has been formed and incorporated or is to be incorporated, and, if so, a copy of the charter and by-laws of the association and the names, addresses, and telephone numbers of the officers and directors of the association, and whether the cemetery association has been granted tax exempt status, and, if so, documentation of such status;
- (4) a statement as to whether a trust fund or a not-for-profit general welfare trust corporation pursuant to Tenn. Code Ann. Title 46, Chapter 7, has been, or is to be, created for the maintenance and upkeep of the cemetery, and, if so, the name, address, and telephone number of the trustee appointed or to be appointed and a copy of the trust agreement or a copy of the charter and by-laws of the trust corporation with the names, addresses, and telephone numbers of the officers and directors of the corporation;
- (5) identification of the source of funds (i.e. lot sales, donations, bequests, or other contributions) used for the maintenance and upkeep of the cemetery, the method used to account for such funds, and the frequency of audits and/or examinations of financial records of the cemetery and trustee, and by whom such audits and/or examinations are performed;
 - (a) for funds derived from lot sales, identification of the percentage of the lot sale price which is deposited into the trust fund;
 - (b) for funds derived from donations, bequests, and other contributions, identification of the percentage which is deposited into the trust fund;
- (6) the age of the cemetery;
- (7) a description of the historic nature of the cemetery and/or its environs, if applicable;
- (8) the area remaining for future use and (if different) the area remaining for future sales;
- (9) the sale of lots, by number of lots sold per year, over the preceding ten (10) years and the price or prices at which the lots sold; and
- (10) the population of the community normally served by the cemetery.

Authority: T.C.A. §§46-1-106(b) and 46-1-108(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-9-.13 NOTICE OF CHANGES TO EXEMPT COMMUNITY CEMETERY INFORMATION.

- (1) With respect to the exempt community cemetery and/or its trust corporation, if applicable, the Commissioner shall be notified in writing within ten (10) days of the effective date of any change in:

- (a) the corporate charter;
 - (b) the corporate by-laws;
 - (c) the officers and/or directors of the corporation;
 - (d) the tax exempt status;
 - (e) the corporate registration status with the Tennessee Secretary of State;
 - (f) the terms of the trust agreement; or
 - (g) the amount of land dedicated to cemetery purposes.
- (2) Such notice of change shall be submitted in writing to the Burial Services Section of the Tennessee Department of Commerce and Insurance and shall include copies of all documents affected by such change.

Authority: T.C.A. §§46-1-106(b) and 46-1-108(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-9-.14 ACCESS TO BOOKS, RECORDS AND PAPERS OF EX-EMPT COMMUNITY CEMETERIES. The granting of an exemption notwithstanding, the Commissioner or the Commissioner's duly authorized representatives shall be allowed, upon demand, full and immediate access to the books, records and papers of the cemetery and/or its trustee which pertain to the financial affairs of the cemetery.

Authority: T.C.A. §§46-1-106(b) and 46-1-108(a), (b), and (c). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-9-.15 IMPROVEMENT CARE TRUST FUND OF EXEMPT COMMUNITY CEMETERIES; DEPOSITS.

- (1) As a condition precedent to the granting of an exemption as a community cemetery, the cemetery applying for such status shall deposit all funds allotted for the maintenance and upkeep of the cemetery into an improvement care trust fund. The trust fund shall be overseen by an independent third party trustee or a not-for-profit general welfare trust corporation created pursuant to Tenn. Code Ann. Title 46, Chapter 7.
- (2) Only the interest and earnings shall be withdrawn from the trust fund for the maintenance and upkeep of the cemetery. Withdrawals from the trust fund shall be made for no other purpose other than reasonable compensation to the trustee, which shall in no event exceed the amount of interest earned.
- (3) The trust agreement shall state the percentage of a lot sale price which shall be deposited into the trust fund. In no event shall the percentage be less than twenty percent (20%).
- (4) Donations, bequests, and other contributions shall be deposited into the trust fund in the amount or percentage designated by the donor, or, in the event that no amount or percentage is specified, then one hundred percent (100%) of the donation, bequest, or other contribution shall be deposited into the trust fund.

Authority: T.C.A. §§46-1-106(b) and 46-1-108(a), (b), and (c). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-9-.16 REVOCATION OF EXEMPTION. Pursuant to Tenn. Code Ann. § 46-1-106(c), the Commissioner may at any time revoke any exemption granted to a community cemetery.

Authority: T.C.A. §§46-1-106(c) and 46-1-108(a) and (b). **Administrative**

History: Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-9-.17 CIVIL PENALTIES.

- (1) With respect to any person required to comply with the provisions of Tenn. Code Ann. Title 46, or rules promulgated thereunder, or granted an exemption under Tenn. Code Ann. § 46-1-106(b), the Commissioner may, in addition to or in lieu of any other lawful disciplinary action, assess civil penalties against such person for each separate violation of a statute, rule or order pertaining to such provisions in accordance with the following schedule:

Violation	Penalty
Tenn. Code Ann. § 46-1-107(a)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-101(b)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-103	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-105(a)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-201(a)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-201(b)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-202	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-204	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-302(a)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-302(b)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-302(c)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-302(d)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-302(e)(1)(A)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-302(e)(2)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-302(f)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-304	Not more than \$1,000.00 nor less than \$100.00

Tenn. Code Ann. § 46-2-305	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-306(a)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-311	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-402(a)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-402(b)	Not more than \$1,000.00 nor less than \$100.00
Tenn.Code Ann. § 46-2-403(a)	Not more than \$1,000.00 nor less than \$100.00
Tenn.Code Ann. § 46-2-403(b)(2)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-403(c)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code. Ann. § 46-2-403(d)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-403(e)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-403(f)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code. Ann. § 46-2-403(g)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-403(h)	Not more than \$1,000.00 nor less than \$100.00
Tenn.Code Ann. § 46-2-404	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-405	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann § 46-2-406(a)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-406(c)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-407(a)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-407(b)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-408	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-2-410(b)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-3-103(a)(3)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-3-103(b)(1)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-3-103(b)(2)	Not more than \$1,000.00 nor less than \$100.00

Tenn. Code Ann. § 46-3-103(b)(3)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-3-103(b)(4)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-3-113(a)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-8-103(a)	Not more than \$1,000.00 nor less than \$100.00
Tenn. Code Ann. § 46-8-103(b)	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-5-9-.03(1)	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-5-9-.03(2)	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-5-9-.03(3)	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-5-9-.04(1)	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-5-9-.04(2)	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-5-9-.06	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-5-9-.07	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-5-9-.08	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-5-9-.09	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-5-9-.10(3)	Not more than \$200.00 nor less than \$25.00
Rule 0780-5-9-.13	Not more than \$100.00 nor less than \$25.00
Rule 0780-5-9-.14	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-5-9-.15(1)	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-5-9-.15(2)	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-5-9-.15(3)	Not more than \$1,000.00 nor less than \$100.00
Rule 0780-5-9-.15(4)	Not more than \$1,000.00 nor less than \$100.00

(2) Each day of continued violation shall constitute a separate violation.

(3) In determining the amount of any civil penalty to be assessed pursuant to this rule, the Commissioner may consider such factors as the following:

(a) whether the amount imposed will be a substantial economic deterrent to the violator;

- (b) the circumstances leading to the violation;
- (c) the severity of the violation and the risk of harm to the public;
- (d) the economic benefits gained by the violator as a result of noncompliance; and
- (e) the interest of the public.

Authority: T.C.A. §§46-1-108(d) and 56-1-308. **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

**RULES
OF
DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF REGULATORY BOARDS**

CHAPTER 0780-5-10

PRE-NEED FUNERAL SERVICE CONTRACTS

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0780-5-10-.01 DEFINITIONS. With respect to this chapter, unless the context requires otherwise:

- (1) “Commissioner” means the Commissioner of the Tennessee Department of Commerce and Insurance or the Commissioner’s designee.
- (2) “Board” means the Board of Funeral Directors and Embalmers for the State of Tennessee.
- (3) “Contract Seller” means and shall include natural persons, partnerships, firms, associations, and corporations residing in or doing business in this state (which includes issuing or performing wholly or in part in this state any incident of a Pre-need Funeral Service Contract), who engage in the business of selling Pre-need Funeral Service Contracts.
- (4) “Contract Buyer” means any person (such person may or may not be a Contract Beneficiary) who purchases a Pre-need Funeral Service Contract from a Contract Seller.
- (5) “Contract Beneficiary” means any natural person specified or included in a Pre-need Funeral Service Contract, upon whose death funeral services and/or funeral merchandise shall be performed, provided or delivered.
- (6) “Financial Institution” means a bank or trust company which is authorized to do business in this state, or a federally insured savings and loan association or a federally insured savings bank.
- (7) “Funds” means money paid pursuant to a Pre-need Funeral Service Contract.
- (8) “Person” means, according to the context, any individual, association, partnership, corporation, or any other organization or entity.
- (9) “Pre-need Funeral Service Contract”, “Pre-need Funeral Contract”, or “Pre-need Contract” means any agreement, contract or plan which is described in Tenn. Code Ann. § 62-5-401.

- (10) "Trust Funds" means funds deposited by a Contract Seller with a Trustee.
- (11) "Trust Instrument" means the document or documents pursuant to which a Trustee receives, holds, invests and disburses Trust Funds.
- (12) "Trustee" means any third person who holds funds pursuant to a Trust Instrument. The term "Trustee" shall not include:
 - (a) a Contract Seller; or
 - (b) anyone employed by, or directly involved with, the Contract Seller in the business of selling Pre-need Funeral Service Contracts.

Authority: T.C.A. §62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.02 PURPOSE. These rules are promulgated for the purpose of administering the provisions of Tenn. Code Ann. Title 62, Chapter 5, Part 4, relative to contracts for future funeral services.

Authority: T.C.A. §62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.03 SCOPE. These rules shall apply to any agreement, contract, or plan requiring the payment of money in advance, whether in a lump sum or installments, which is made or entered into with any person, association, partnership, firm, or corporation for the final disposition of a dead human body, or for funeral or burial services, or for the furnishing of personal property or funeral or burial merchandise, wherein the use of the personal property or the funeral or burial merchandise or the furnishing of professional services by a funeral director or embalmer is not immediately required. Any financial institution which holds funds pursuant to Tenn. Code Ann. § 62-5-401 shall also be governed by these rules.

Authority: T.C.A. §§62-5-401 and 62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.04 EXEMPTIONS. Nothing in these rules shall apply to cemetery lots or permanent grave or crypt markers, nor shall burial associations where the certificate for burial benefits does not exceed one hundred dollars (\$100.00) be governed by such rules. Contracts of insurance subject to the regulation of the Department of Commerce and Insurance of the State of Tennessee shall not be governed by these rules. Nothing in these rules shall be construed as in conflict with Tenn. Code Ann. Title 46, as amended.

Authority: T.C.A. §§62-5-401, 62-5-405(a) and (b), and 62-5-408. **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.05 RECORDS.

- (1) All contract sellers and trustees shall maintain, within the State of Tennessee, accurate accounts, books and records in this state concerning transactions regulated under these rules.
- (2) (a) A contract seller's accounts, books, and records shall include:

1. copies of all pre-need contracts, with each contract and its related documentation maintained in a separate file;
 2. the dates and amounts of payments made and accepted thereon;
 3. the name and address of each contract buyer;
 4. the name of the contract beneficiary of each pre-need contract; and
 5. the name of the trustee holding the trust funds received under each contract.
- (b) A trustee's accounts, books and records shall include:
1. the name of the contract seller;
 2. the amount and date of receipt of all funds received from the contract seller; and
 3. a record of all disbursements.
- (3) A contract seller shall retain all required accounts, books, and records pertaining to each pre-need contract for at least two (2) years after the date of performance or termination. Such accounts, books and records shall be available for inspection by contract buyers during normal business hours at the contract seller's place of business.

Authority: T.C.A. §62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.06 EXAMINATION OF RECORDS. All contract sellers and trustees shall make all accounts, books and records required to be kept under Rule 0780-5-10-.05 available to the Commissioner for the purpose of examination or audit. The Commissioner may examine or audit such accounts, books and records whenever the Commissioner deems necessary for the protection of contract buyers or beneficiaries.

Authority: T.C.A. §62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.07 ANNUAL REPORTS. All contract sellers and trustees shall, no later than March 15 of each year, file an annual report with the Commissioner on such forms as the Commissioner may prescribe. Such report shall include a summary of the information contained in the accounts, books and records required to be kept under Rule 0780-5-10-.05, and such other information as the Commissioner may reasonably require.

Authority: T.C.A. §62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.08 TRUST INSTRUMENTS.

- (1) Each trust instrument, and any amendments thereto, shall be filed with the Commissioner. Each trust instrument shall specify:
 - (a) the name of the contract seller;
 - (b) the name of the trustee;
 - (c) the trustee's duties in conformance with the provisions of these rules;
 - (d) the basis for determining the trustee's fee (if any); and
 - (e) any other appropriate terms of the trusteeship.

- (2) Each trust instrument shall bind the trustee to make available at reasonable times and places, on request by a contract buyer, the trustee's records of the trust account established pursuant to the contract buyer's pre-need contract.
- (3) The Commissioner may require alterations or additions to a trust instrument if the Commissioner finds that it is not in accord with the provisions of these rules.

Authority: T.C.A. §62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.09 DEPOSIT OF FUNDS.

- (1) Contract sellers shall deposit all funds received on account of a pre-need contract as soon as possible after receipt, and in no event later than thirty (30) days after receipt.
- (2) All deposits of funds with a trustee shall be in cash only pursuant to a trust instrument; provided, however, that, at any time, a contract seller may change the trustee of its trust funds. In the event of such change of trustee, the requirements of Rule 0780-5-10-.08 shall be complied with.

Authority: T.C.A. §62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.10 INVESTMENT OF TRUST FUNDS.

- (1) A financial institution acting as trustee of trust funds under these rules shall invest such funds in accordance with applicable law. In so investing, such trustee shall exercise the judgement and care under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not in regard to the speculation, but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.
- (2) An individual acting as a trustee of trust funds under these rules shall not, after depositing such funds with a financial institution, withdraw the trust funds for any purpose other than payment for funeral merchandise or service and refund of any balance remaining as provided by law. However, such individual trustee may, upon proper written authority, transfer trust funds to another financial institution or successor trustee.
- (3) Subject to contractual agreement between the parties, the trustee may receive a reasonable fee for services rendered as a trustee from the interest or earnings on the funds.

Authority: T.C.A. §§62-5-401, 62-5-402, and 62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-.11 REVOCATION OF TRUST ACCOUNT. A financial institution holding trust funds in a revocable trust account shall promptly notify the contract seller if a contract buyer exercises the right under Tenn. Code Ann. § 62-5-403(b) to withdraw any or all of such funds.

Authority: T.C.A. §62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-12 OUTSTANDING CONTRACTS. The provisions of these rules relating to trustees and investment of trust funds shall apply to the disposition of all proceeds from pre-need contracts issued and outstanding from March 25, 1963 and thereafter.

Authority: T.C.A. §62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-13 PRE-NEED CONTRACT PROVISIONS.

- (1) No contract seller shall use a pre-need contract form unless the contract seller has submitted the form to the Commissioner, and the Commissioner has approved the form.
- (2) Every pre-need contract shall contain, at a minimum, the following:
 - (a) a statement as to whether the contract establishes a revocable trust account or an irrevocable trust account;
 1. if such trust account is revocable, a statement that the purchaser of the merchandise and/or services under the contract shall be entitled to receive any or all of the payments made and any earnings or interest thereon upon demand on the trustee prior to the death of the contract beneficiary;
 2. if such trust account is irrevocable, the contract shall state on its face and in boldface type and all uppercase letters the following:

“The trust account established by this contract is irrevocable, and the funds paid hereunder are not refundable. Accumulated trust principal and interest are freely transferable to satisfy funeral expenses at any licensed funeral establishment as provided by law.”
 - (b) a clear disclosure as to whether the funds identified as having been paid or are to be paid:
 1. are to be applied to the price of funeral merchandise and services to be selected by a designated person at the time of death of the person for whom the funds were paid. In the event this condition applies, the contract shall state on its face in boldface type and uppercase letters, the following:

“_____ if the amount in the trust account
(Purchaser’s Signature)
exceeds the prevailing price (at the time of selection) of the funeral merchandise and services selected, the balance remaining shall be refunded to _____
(Name).”
 2. fully pay for the funeral merchandise and services (or their equivalent) identified therein; or
 3. fully pay for the funeral merchandise and services (or their equivalent) identified therein, if and only if the prevailing price thereof at the time of the death of the contract beneficiary does not exceed the amount in the trust account at that time.

- (c) a means whereby the purchaser can indicate his or her choice of either paying or not paying any applicable sales or use tax for the related merchandise or services at the time the contract is entered into;
 - (d) a complete disclosure of the pricing arrangement and of any contingent liabilities or costs of the buyer;
 - (e) a disclosure that, upon the death of the contract beneficiary, the trustee shall release an amount equal to the agreed purchase price to the contract seller upon proof of death of the contract beneficiary and verification that all of the terms of the pre-need contract have been fully performed by the contract seller;
 - (f) a disclosure that the trustee shall pay any balance remaining in the trust fund after payment for the funeral merchandise and services in accordance with the pre-need contract:
 - 1. to the contract buyer or his estate, if such merchandise and services are itemized in the contract; or
 - 2. to the person designated by the contract buyer in the boldface disclosure required by part (2)(b)1. of this rule, if selection of such merchandise and services is deferred until the death of the contract beneficiary.
 - (g) a disclosure that the contract, books, records and accounts pertaining to the contract buyer's contract shall be available for inspection by the contract buyer at the contract seller's place of business during normal working hours;
 - (h) a disclosure of the identity and address of the trustee for the purchaser's funds and that notification to purchasers need not be made upon change of trustees so long as this information is available upon request; and
 - (i) a disclosure that if the buyer and seller agree upon a reasonable fee for the trustee, such fee will be paid in the manner prescribed by these rules.
- (3) No pre-need contract form shall contain:
- (a) a provision specifying any particular investment of trust funds; or
 - (b) any provision not in compliance with Tenn. Code Ann. Title 62, Chapter 5, Part 4, or any of these rules.
- (4) The contract seller shall give to the contract buyer a copy of the pre-need contract, and any amendment thereto, at the time of its execution.
- (5) No approval of a pre-need contract form by the Commissioner shall be used for advertising or promotional purposes.
- (6) As soon as possible after the submission of a proposed pre-need contract form pursuant to this rule, the Commissioner shall approve or disapprove the form in writing; provided, however, that a preneed contract form shall be deemed approved unless disapproved within sixty (60) days after its receipt. In the event that the Commissioner disapproves a preneed contract form, the Commissioner shall specify in what respect such form does not meet the requirements of law.

Authority: T.C.A. §§62-5-403 and 62-5-405(a) and (b). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-14 REGISTRATION OF CONTRACT SELLERS; FEES.

- (1) No person, association, partnership, firm or corporation shall act as a contract seller without a valid certificate of registration issued by the Commissioner.
- (2) An application for registration as a contract seller shall be submitted on the form prescribed by the Commissioner and shall be accompanied by a nonrefundable fee of three hundred dollars (\$300.00).
- (3) All contract seller registrations shall be effective for one (1) year.
- (4) On and after the effective date of this rule, all contract seller registrations not expiring on September 30 of each year shall expire on the anniversary of the initial registration. A certificate of registration may be renewed at any time during the two (2) months preceding such date by filing the prescribed form with the Commissioner and paying a fee of three hundred dollars (\$300.00).
- (5) Certificates of registration not renewed by the expiration date are invalid and shall be subject to a penalty fee of two hundred dollars (\$200.00) for each month or portion thereof for which the renewal is late, for a maximum of two (2) months. The penalty fee is in addition to the renewal fee.
- (6) Certificates of registration shall not be renewed later than two (2) months after the expiration date of such certificate. Such certificates may be reinstated upon the submission of the proper form accompanied by a reinstatement fee of one thousand dollars (\$1,000.00).

Authority: T.C.A. §62-5-405(a), (b), and (d). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-15 ANNUAL AUDITS; FEES.

- (1) The Commissioner shall require an annual audit to ensure that each contract seller will be able to perform its contract with the purchaser.
- (2) The fee for the audit of pre-need trust accounts shall be three hundred dollars (\$300.00) per auditor, per day. The contract seller shall be billed in increments of not less than one-half day for each halfday or any portion thereof.
- (3) The contract seller shall remit payment to the Department not later than sixty (60) days after the invoice date.

Authority: T.C.A. §62-5-405(a), (b), and (c). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

0780-5-10-16 CIVIL PENALTIES.

- (1) With respect to any person, partnership, firm, association or corporation required to comply with the provisions of Tenn. Code Ann. Title 62, Chapter 5, Part 4, or rules promulgated thereunder, the Commissioner may, in addition to or in lieu of any other lawful disciplinary action, assess civil penalties against such person for each separate violation of a statute, rule or order pertaining to such provisions in accordance with the following schedule:

Violation	Penalty
Tenn. Code Ann. § 62-5-401	Not more than \$1,000.00 nor less than \$25.00
Tenn. Code Ann. § 62-5-402(a)	Not more than \$1,000.00 nor less than \$25.00
Tenn. Code Ann. § 62-5-402(b)	Not more than \$1,000.00 nor less than \$25.00
Tenn. Code Ann. § 62-5-402(c)	Not more than \$1,000.00 nor less than \$25.00
Tenn. Code Ann. § 62-5-403	Not more than \$1,000.00 nor less than \$25.00
Tenn. Code Ann. § 62-5-404(b)	Not more than \$1,000.00 nor less than \$25.00
Tenn. Code Ann. § 62-5-404(c)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.05(1)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.05(2)(a)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.05(2)(b)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.05(3)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.06	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.07	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.08(2)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.09(1)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.09(2)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.10(1)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.10(2)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.11	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.13(1)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.13(2)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.13(3)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.13(4)	Not more than \$1,000.00 nor less than \$25.00
Rule 0780-5-10-.13(5)	Not more than \$1,000.00 nor less than \$25.00

- | | |
|-----------------------|---------------------------------------------------|
| Rule 0780-5-10-.14(1) | Not more than \$1,000.00
nor less than \$25.00 |
| Rule 0780-5-10-.15(3) | Not more than \$1,000.00
nor less than \$25.00 |
- (2) Each day of continued violation shall constitute a separate violation.
- (3) In determining the amount of any civil penalty to be assessed pursuant to this rule, the Commissioner may consider such factors as the following:
- (a) whether the amount imposed will be a substantial economic deterrent to the violator;
 - (b) the circumstances leading to the violation;
 - (c) the severity of the violation and the risk of harm to the public;
 - (d) the economic benefits gained by the violator as a result of noncompliance; and
 - (e) the interest of the public.

Authority: T.C.A. §§56-1-308 and 62-5-405(a), (b), and (e). **Administrative History:** Original rule filed October 22, 2002; effective January 5, 2003.

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